TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No 201.

THOMAS F. FARRELL ET AL., PLAINTIFFS IN ERROR,

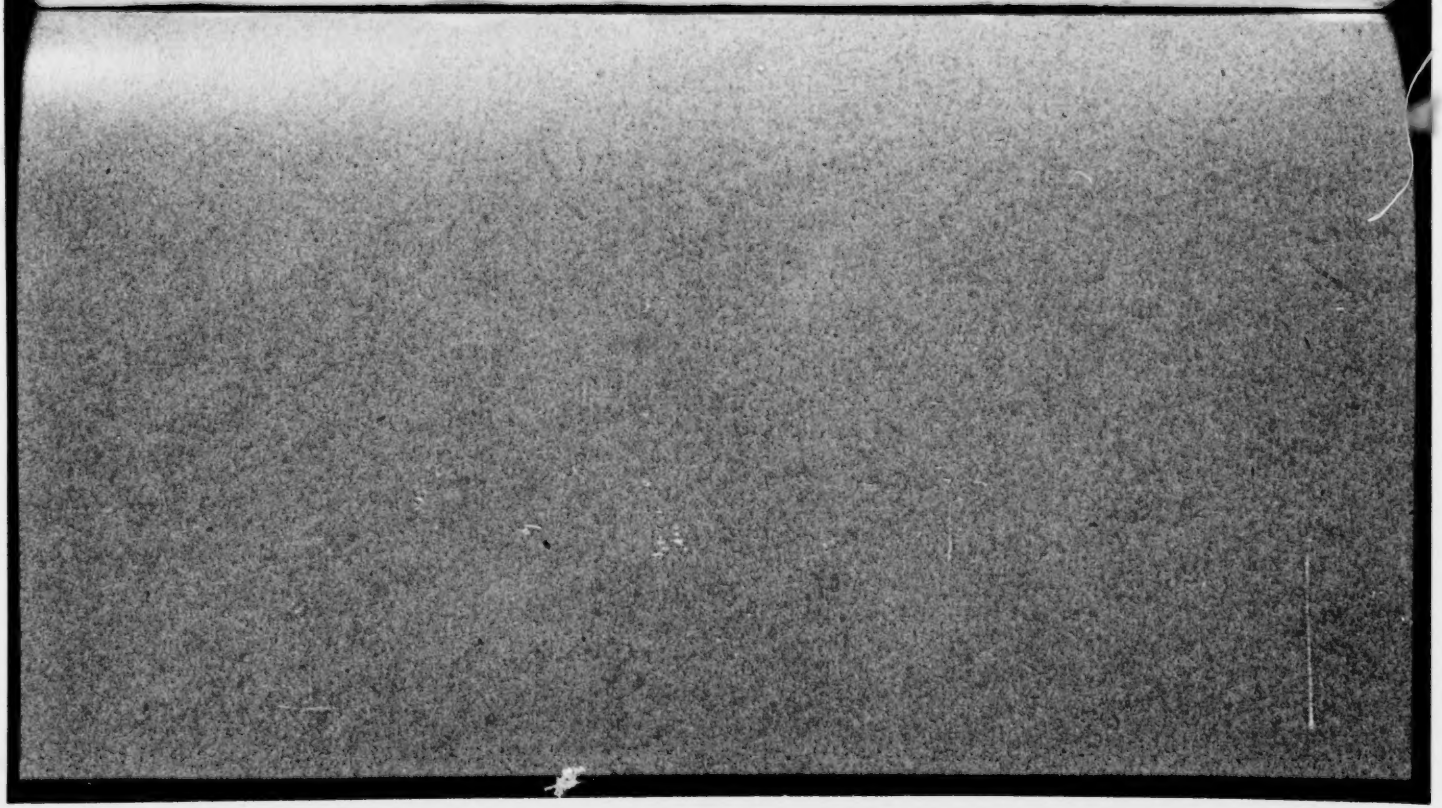
vs.

THE WEST CHICAGO PARK COMMISSIONERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED FEBRUARY 9, 1900.

(17,639.)



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THE WEST CHICAGO PARK COMMISSIONERS.

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INDEX.

	Original.	Print.
Writ of error	*a*	1
Clerk's certificate as to lodging copy of writ of error	*c*	2
Citation	*d*	2
Clerk's certificate as to lodging copy of citation	*g*	3
Clerk's certificate and return to writ of error	*h*	4
Caption	1	4
Transcript from county court of Cook county	2	5
Caption	2	5
Petition	3	5
Assessment-roll (part omitted in printing)	11	9
Order granting leave to commissioners to sign assessment-roll, &c. (omitted in printing)	27	—
Objections to confirmation of assessment (part omitted in printing)	28	11
Schedule of lands—A. (omitted in printing)	36	—
—B. (" ")	42	—
Order fixing time to file objections	45	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1901.

	Original.	Print
Objections to confirmation of assessment (parts omitted in printing)	46	13
Schedule of lands (omitted in printing)	47	—
Certificates of publication (" ")	56	—
Special assessment notice (" ")	57	—
Affidavit of posting notice (" ")	57	—
Commissioners' affidavit (" ")	58	—
Motion for default and confirmation	59	16
Order granting leave to commissioner to sign assessment-roll (omitted in printing)	65	—
Motion of Elizabeth Keller to set aside judgment of confirmation, &c. (omitted in printing)	66	—
Judgment, April 27, 1897	67	16
Allowance of appeal	67	16
Order continuing motion for rehearing	68	17
Order denying motion for rehearing, &c.	69	17
Order of confirmation as to property in default (omitted in printing)	70	—
Order reinstating cause	71	17
Order granting leave to file amended and additional objections	72	17
Additional objections (parts omitted in printing)	73	18
Order overruling objections triable by the court	81	21
Order beginning trial by jury	82	21
Verdict	83	22
Order granting leave to file motion for new trial	84	22
Judgment, May 26, 1898	85	22
Allowance of appeal	85½	23
Order continuing hearing on motion to set aside, &c.	86	23
Order refusing to set aside order overruling motion for new trial	87	23
Amendment to petition, June 7, 1898 (omitted in printing)	88	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	89	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	90	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	91	—
Bill of exceptions	92	24
Offers of evidence, &c.	93	24
Petitioners' Exhibit 1—Ordinance of March 28, 1893	94	25
2—Petition in cause No. 10655	97	27
Exhibit A—Diagrams (omitted in printing)	105	—
B—Specifications (omitted in printing)	107	—
C—Estimate	119	32
Testimony of George W. Dorr	124	35
Petitioners' Exhibit 3—Ordinance of August 4, 1896	127	37
Motion to dismiss	131	39
Testimony of Nathan G. Moore	132	40
Francis T. Colby	134	41

	Original.	Print
Wilbur Exhibit 1—Order of county court in case No. 10655, March 12, 1897 (part omitted in printing)	135	42
2—Writ of supersedeas in case No. 10655, filed October 4, 1895 (omitted in printing)	145	—
3—Writ of supersedeas in case No. 10655, filed October 10, 1895 (omitted in printing)	150	—
4—Writ of supersedeas in case No. 10655, filed March 12, 1897 (omitted in printing)	152	—
5—Notice in case No. 10655, March 1, 1897 (omitted in printing)	155	—
Testimony of Michael Kelter.....(omitted in printing)	157	—
Default order in case No. 10655, May 12, 1893 (omitted in printing)	164	—
Jury impanneled and view the premises	165	45
Proceedings May 25, 1898	166	45
Testimony of George W. Dorr	171	48
Objectors' Exhibit 1—Subpœna to Ernest G. Schubert *et al.* (omitted in printing)	177	—
Objectors' Exhibits 2 to 7 offered...(omitted in printing)	178	—
Instructions given on behalf of petitioners	180	52
Instructions asked by objectors	182	53
Motion for new trial	184	54
Notice of filing affidavits.....(omitted in printing)	186	—
Affidavit of George W. Dorr	188	56
Exhibits A, B, C, and D—Diagrams	197	61
Affidavit of Lewis R. Dyer	201	62
George W. Wilbur.....(omitted in printing)	203	—
Judge's certificate to bill of exceptions	204	63
Stipulation to use original bill of exceptions on appeal (omitted in printing)	205	—
Order extending time to file bill of exceptions, &c. (omitted in printing)	206	—
Bond on appeal.....(omitted in printing)	207	—
Certificate of clerk of county court to transcript	215	63
Assignment of errors	216	64
Additional assignment of errors.....(omitted in printing)	218½	—
Order taking motion to extend time to file briefs under advisement (omitted in printing)	219	—
Order extending time to file briefs.....(omitted in printing)	220	—
Order granting leave to file additional assignment of errors (omitted in printing)	221	—
Order taking cause under advisement	222	65
Order taking motion to dismiss under advisement (omitted in printing)	223	—
Order reserving motion to dismiss to final hearing	224	65
Judgment, December 21, 1898	225	66
Order allowing petition for rehearing	226	67
Order taking cause under advisement	227	67

	Original.	Print
Judgment, October 13, 1899	228	67
Opinion	231	68
Order staying proceedings	237	72
Order denying petition for rehearing	238	72
Petition for writ of error	240	73
Affidavit of George W. Wilbur.....(omitted in printing)..	244	—
Order allowing writ of error, &c	248	75
Bond on writ of error. .....(part omitted in printing)..	251	77
Affidavit of George W. Wilbur.....(omitted in printing)..	255	—
Order allowing Michael Hannigan to become party to writ of error, &c..(omitted in printing)..	256	—
Assignment of errors	259	78
Statement of errors and designation by plaintiffs in error of parts of record to be printed	262	79

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sara E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunning-
b ham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, and Joseph E. Bidwell, defendants and plaintiffs in error, and The West Chicago Park Commissioners, plaintiffs and defendants in error, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error has happened, to the great damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be

done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 23rd day of January, in the year of our Lord one thousand nine hundred.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—
JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

c In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court of Cook.

I, Christopher Mamer, clerk of the said supreme court, do hereby certify that on the twenty-third day of January, in the year of our Lord one thousand nine hundred, a copy of the foregoing writ of error for the defendants in error was lodged in my office at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of said court this third day of February, A. D. 1900.

[Ten cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

d UNITED STATES OF AMERICA, *ss:*

To the West Chicago Park Commissioners, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sara E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neill, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M·

Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Strueh, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr.; Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, and Michael Hannigan are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the *e* judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, chief justice of the supreme court of the State of Illinois, this 24th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. CARTWRIGHT,
Chief Justice Supreme Court of Illinois.

f [Endorsed:] 878. Supreme court of Illinois. *Supreme court.* McN. Farrell *et al. v.* West Chicago Park Com'rs' Citation. Earnest Shubert, sec. 2/2. Rec'd 10.10 o'clock a. m., Jan. 31, 1900. Ernest J. Magerstadt, sheriff. George W. Wilbur, attorney-at-law, Borden block, 99 Randolph St., Chicago.

Pd. $1.00.

STATE OF ILLINOIS, } *ss.:*
Cook County, }

Served this writ on the within-named The West Chicago Park Commissioners, a corporation, by delivering a copy thereof to Ernest C. Schubert, secretary of said corporation, this 2nd day of February, 1900, the president of said corporation not found in my county.

ERNEST J. MAGERSTADT, *Sheriff,*
By THOS. J. McNICHOLS, *Deputy.*

g In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court of Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the third day of February, A. D. 1900, a copy of the foregoing citation and return thereon was lodged in my office at Springfield, Illinois.

Witness my hand and the seal of said court this third day of February, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

h In the Supreme Court of Illinois.

THOMAS F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } Appeal from County Court, Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and seal thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages, numbered from one (1) to two hundred and fifty-seven (257), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled, and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this third day of February, in the year of our Lord one thousand nine hundred.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent United States internal-revenue stamp, canceled Feb. 3, 1900.]

1 At a supreme court begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the fifth day of October, A. D. 1898, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the county court of Cook county; which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss.:
State of Illinois, County of Cook, }

Pleas before the Honorable William T. Hodson, county judge of Jo Daviess county, presiding as judge of the county court of Cook county, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of May, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Honorable William T. Hodson, acting judge of the county court of Cook county; James Pease, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to wit, on the 28th day of August, in the year of our Lord one thousand eight hundred and ninety-six, the same being one of the days of the term of the county court of Cook county, there was filed with the clerk of said court a certain petition in words and figures following, to wit:

3 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

To the Honorable Orrin N. Carter, judge of said court:

Your petitioner, West Chicago Park Commissioners, respectfully show- that said commissioners are park commissioners and corporate authorities for park purposes for the town of West Chicago, and that they have been appointed as such under and in pursuance of acts of the General Assembly of the State of Illinois, which have been submitted to the legal voters of said town, and by them adopted for the purpose of locating, establishing, enclosing, improving, and maintaining public parks, boulevards, driveways, and highways, and duly authorized to perform and discharge such duties as are by law imposed upon such authorities.

That your petitioner, in pursuance of said authority conferred upon it, did locate a boulevard or pleasureway in said town of West Chicago known as Douglas boulevard (or Douglas Park boulevard), extending from the southeasterly boundary of Garfield park to the western boundary line of Douglas park, said two parks and said boulevard being under the jurisdiction, control, and authority of your petitioner.

And your petitioner further shows that, desiring to improve said Douglas boulevard from the southeasterly line of Garfield park to the western line of Douglas park, it did carefully designate the line of said improvements, and did prepare a plan or plans thereof, and did prepare an estimate of the cost of such contemplated improve-

ment, together with specifications therefor, and did transmit
4 such plan, specifications, and estimates to the supervisor, assessor, and clerk of the said town of West Chicago in which said boulevard is located, said officers being the corporate authorities duly designated by an act of the General Assembly of the State of Illinois entitled "An act in regard to the completion, improvement, and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1st, 1873, as the corporate authorities of said town to make a special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that your petitioner was requested and authorized to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land frontage on the proposed improvement as required by said act of May 2d, 1873.

Your petitioner further shows that upon the transmission and presentation of said plans, specifications, and estimates the corporate authorities of said town designated by said statute, at a special meeting called for that purpose, and held at the office of said town of West Chicago on March 28th, A. D. 1893, determined by ordinance duly adopted and passed by said authorities that such improvements as were described in the plans, specifications, and estimates so transmitted to said corporate authorities of said town should be made, and that the expense of such improvement should be raised wholly by a special assessment upon the property, lots, and lands fronting and abutting upon said Douglas boulevard, as aforesaid; that thereafter, on April 7th, A. D. 1893, a petition was filed in this honorable court by said town of West Chicago reciting said proceedings and ordinance and praying that commissioners to assess the cost of said improvement on the property benefited might be appointed (case number 10655) and for such further proceed-
5 ings as might be necessary to properly levy and collect said special assessment; that thereafter commissioners were duly appointed, an assessment-roll was duly made and filed as prayed in said petition, and on the 12th day of May and on the 8th day of July, 1893, orders were entered in said cause confirming said assessment-roll; that thereafter various lot-owners made payments on various lots as assessed in said roll, and a large portion of said assessments were collected; that various lot-owners so assessed have failed, declined, and refused to pay their assessments, and so a large portion of such assessment remains uncollected.

Your petitioner further shows that after said confirmation orders the owners of certain property assessed in said roll served out a writ of error from the supreme court of Illinois, seeking to annul the confirmation of said special assessment; and thereafter the said cause was heard in the said supreme court, and the said court, after considering the same, and on 28th day of March, 1896, ordered that said cause be reversed and remanded for further proceedings, and with certain directions, and held that said ordinance for the making of said improvement was void because it illegally provided that said

assessment should be divided into installments, and that said judgments of confirmation were null and void; wherefore the provisions of said ordinance and said special-assessment proceedings have failed; that in consequence thereof all attempts to collect said assessments have been abandoned by petitioner by resolution duly entered on its records.

Your petitioner further shows that, by reason of the special-assessment proceedings aforesaid for the purpose of paying for the said improvement having so been declared null and void and the said provisions thereof having failed, your petitioner is desirous and hereby petitions said court that a new special assessment for
6 the cost of said improvement on property benefited may be levied, and that all lots, blocks, tracts, or parcels of land found benefited by the same shall pay for the said benefits.

Your petitioner further shows that on the 14th day of July, A. D. 1896, in pursuance of its desire and purpose to have made, levied, and collected a new special assessment for the cost of said improvement they passed the following ordinance:

An ordinance for the special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park, formerly known as Central park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago park commissioners, in regular meeting assembled:

SECTION 1. That whereas the corporate authorities of the town of West Chicago passed an ordinance on March 28th, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates made and transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement, and

Whereas, certain proceedings were instituted by the corpo-
7 rate authorities of said town of West Chicago, in the county court of Cook county, on April 17th, A. D. 1893, for the levying of a special assessment for the cost of said improvement in pursuance of said ordinance, as case number 10655 of said court, and

Whereas, the said boulevard improvement has been heretofore made and completed, and

Whereas, the said special-assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement have been heretofore and on the 28th day of March, A. D. 1896, declared void by the supreme court of

Illinois, a court of competent jurisdiction, and the provisions of said ordinance for the special assessment have failed, and

Whereas, said boulevard improvement provided for in said ordinance included an asphalt roadway, and a granite macadam roadway, concrete sidewalks, and concrete combined curb and gutter, earth filling, grass plats, seeding, trees, catch-basins and connections and superintendence of work: Now

Therefore be it ordained:

SECTION 2. That a new special assessment on the property benefited by the said improvement, to the amount that the same may be legally assessed for, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such costs to be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled, "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th, 1895, and in force July 1st, 1895.

SECTION 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SECTION 4. This ordinance shall be in force from and after its passage.

8 Your petitioner further shows that afterwards, and on the said 14th day of July, A. D. 1896, said commissioners also made an estimate of the cost of said improvement, and a report thereof was entered upon their records, and that the said estimate and order adopting and spreading the same upon record are as follows:

Be it resolved and ordered that the following estimate be adopted as the estimate of this board of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby, directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement, in accordance with the act in said ordinance mentioned.

Estimate of Cost of Improvement and Report Thereon.

The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, said estimate being made in pursuance of an ordinance of the West Chicago park commissioners, passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement, which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners re-

lating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

9 *Estimate.*

Asphalt paving	$110,420.71
Macadam paving	35,087.81
Combined curb and gutter	28,045.34
Cement sidewalk	24,262.26
Filling	17,290.20
Trees	1,110.30
Catch-basins and connections	3,819.59
Gas-lamp connections	2,106.00
Manhole covers, sand, cement, brick, pipe	1,006.89
General labor, teaming, engineering, surveying, and inspection	19,770.51
Expense of making and levying this assessment	7,287.59
Total cost of improvement	$250,207.20

Wherefore this petitioner prays that the cost of said improvement may be assessed in the manner provided by law and in accordance with the said act approved June 24th, and in force July 1st, A. D. 1895.

WEST CHICAGO PARK COMMISSIONERS,
By E. T. NOONAN, *Its Attorney.*

And of—
H. S. MECARTNEY, *Counsel.*

10 And afterwards and on, to wit, the 29th day of August, 1896, a certain assessment-roll was filed in said cause; which assessment-roll is in words and figures as follows, to wit:

11–23 *Assessment-roll.*

Assessment-roll, made by the West Chicago park commissioners and filed in the county court of Cook county, for the special assessment of the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, Cook county, Illinois. Showing a description of real estate deemed by said commissioners specially benefited by said completed improvement, and also showing a description of each lot, block, tract, or parcel of land, and the total amount assessed by said commissioners as special benefits thereto, the names of the respective owners thereof, so far as known, showing, also, the credit to which each lot, block, tract, or parcel of land so specially assessed is entitled to, if any, for or on account of payments on previous assessments or installments thereof, and the net amount of benefits assessed thereon; also, showing the amount found by said commissioners as public

benefit and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners.

24 * * * * * * *

Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the property specially benefited by said improvement, and apportioned to and assessed upon such property	$249,965 21
Proportion of the total cost of the said completed improvement which is estimated will be of benefit to the public, and assessed to the district subject to the maintenance of the parks under the control of said West Chicago park commissioners	241 99
Total cost of the said completed improvement	$250,207 20

25 CHICAGO, *August* 29, 1896.

The undersigned, West Chicago park commissioners, do hereby certify to the county court of Cook county, that they have specially assessed the cost of the completed boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park in the town of West Chicago in the city of Chicago, Cook county, Illinois.

And said commissioners do further certify that the said special assessment is shown by the foregoing assessment-roll, showing a description of the real estate by them deemed benefited by said completed improvement; also showing a description of each lot, block, tract or parcel of land, and the total amount assessed by them as special benefits thereto, the names of the respective owners thereof so far as known, showing also the amount found by said commissioners as public benefit and assessed to the district subject to the maintenance of the parks under control of said West Chicago park commissioners. That before entering upon their said duties, they examined the locality where the said completed improvement has been made, and the lots, blocks, tracts and parcels of land which are specially benefited thereby, and did estimate what proportion of the total cost of said completed improvement is of benefit to the public, and what proportion thereof is of benefit to the property benefited, and did apportion the same between the said park district and such property so that each should bear its relative equitable portion.

26 & 27 The amount so estimated and apportioned to said park district being the sum of $241.99 and the amount so estimated and apportioned to property benefited being the sum of $249,965.21. That, having found said amounts, they did apportion and assess the amount so found of benefit to said property, upon the several lots, blocks, tracts and parcels of land, in the proportion in which they are benefited by said completed improvement, and that no lot, block, tract or parcel of land has been assessed a

greater amount than it has been actually benefited thereby; that said assessment-roll also shows the credit to which each lot, block, tract or parcel of land so specially assessed is entitled to, if any, for or — account of payments on previous assessments, or installments thereof, and the net amounts of benefits assessed thereon.

HARVEY T. WEEKS,
CARL MOLL,
WALTER S. BOGLE,
ANDREW J. GRAHAM,
JOHN M. OLIVER,
CHARLES J. VOPICKA,
EDWARD G. UHLEIN,
West Chicago Park Commissioners.

28 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County, of the September Term, 1896.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

And now come the several parties whose names are set down in the "Schedule of Land A" and "Schedule of Land B" hereto attached, by George W. Wilbur, their attorney, and say that they are respectively the owners of or interested in the several lots and parcels of land described therein and set opposite their respective names, and object to the confirmation of said assessment upon said lots or parcels of land or either of them or any part thereof for the reason stated in the instrument hereto attached and entitled herein "Objections to judgment."

GEO. W. WILBUR,
Attorney for Objectors.

* * * * * * *

29 3d. Said petitioners, The West Chicago Park Commissioners, were never authorized or requested to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land fronting on the proposed improvement, as required by the act of May 2, 1873; neither did said petitioners at any time have or obtain such consenting petition, signed by a majority of such owners.

* * * * * * *

30 8th. These objectors further state that said petitioners never passed a legal and proper ordinance, in the manner and form as required by law for making the assessment set forth in the petition herein.

9th. These objectors further state that said act under which said petition was filed entitled "An act to enable park commis-
31 sioners and park authorities to make local improvements and provide for the payment thereof," approved June 24, 1895,

and in force July 1, 1895, is not in accordance with the constitution of the State of Illinois, and is therefore void.

* * * * * * *

11th. These objectors state that said West Chicago Park Commissioners had no authority under the law to make said improvement or to make any assessment therefor, and that all their acts and doings in regard thereto are void.

12th. These objectors state that a boulevard has been completely laid upon the territory described in the petition herein that said improvement has been completed in all its detail for many months last past and that the petition herein is for the purpose of making an assessment for an improvement already completed, and is therefore void.

* * * * * * *

14th. These objectors state that the West Chicago Park Commissioners have no authority under the law to make any assessment whatever for the purposes in said petition set forth; that said improvement is an ornamental pleasureway and can be used for
32 only limited purposes; that the cost thereof should be paid for by said commissioners from the money derived from the park and boulevard tax and from other sources, and not by special assessment.

* * * * * * *

16th. Said West Chicago Park Commissioners, the petitioners herein, have no legal right or authority to act as commissioners in making said assessment and determining the amount to be assessed against the several pieces and parcels of land alleged to be benefited by said completed improvement; that said commissioners, as appears by the petition herein, are parties in interest in the matter of said petition, and are not disinterested commissioners in the making of said assessment.

17th. These objectors state that there is no statute or provision of law in force in the State of Illinois authorizing the West
33 Chicago Park Commissioners to make a special assessment for any improvement whatever; that the petition herein and the assessment-roll filed therewith are for a special assessment for the cost of said improvement, and made to be levied upon all property benefited and not upon all property abutting upon said improvement, and such proceedings are therefore void.

* * * * * * *

19th. And these objectors further state that their respective lots and pieces of land herein are not benefited by said alleged improvement to the amount of the assessment thereof, or to any amount whatever as is allowed in said petition and the assessment-roll herein.

* * * * * * *

34 22d. That the original proceedings for the making of said assessment does not specify the nature, character, locality and description of said improvement, and is void for uncertainty.

* * * * * * *

35 24th. That the estimate of the cost of said completed improvement was not made and approved as required by law; that no sufficient proof of services of notice by publication, proof and mailing has ever been made and filed in this cause in the manner required by law; that said special assessment is void because it is not levied in accordance with any ordinance providing for said special assessment, and because the ordinance which is the basis of said special assessment has been declared void; that said ordinance upon which said improvement is based is unconstitutional and void because it provides for several distinct and independent improvements based upon altogether different and distinct acts of the legislature; that it is unreasonable and oppressive; that said assessment is void because it appears from the face of the petition that the only ordinance in any manner specifying the nature, character, locality and of the description of the improvement was an ordinance passed by the town of West Chicago, and not by the West Chicago Park Commissioners, and that said ordinance has been declared absolutely null and void by the supreme court, and no valid estimate or valid assessment could be based thereon; that said assessment is void as to all property not abutting upon said boulevard.

* * * * * * *

36–44 For the above reasons these objectors object to the confirmation of said special assessment, and ask that the proceedings and petition herein be dismissed out of this court.

* * * * * * *

45 And afterwards and on, to wit, the 16th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

On motion of the attorney for the said petitioners, it is ordered by the court that any and all parties desiring to object to the confirmation of the assessment-roll herein file their objections thereto in writing on or before September 23, 1896, at ten o'clock a. m.

46–48 STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County, of the September Term, 1896.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

And now come the several parties whose names are set down in the "schedule of lands" hereto attached, by George W. Wilbur,

their attorney, and say that they are respectively the owners of or interested in the several lots and parcels of land described therein and set opposite their respective names, and object to the confirmation of said assessment upon said lots or parcels of land or either of them or any part thereof for the reason stated in the instrument hereto attached and entitled herein "Objections to judgment."

GEO. W. WILBUR,
Attorney for Objectors.

* * * * * * *

49 3. Said petitioners, The West Chicago Park Commissioners, were never authorized or requested to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land fronting on the proposed improvement, as required by the act of May 2, 1893; neither did said petitioners at any time have or obtain such consenting petition, signed by a majority of such owners.

* * * * * * *

5. These objectors further state that said petitioners never passed a legal and proper ordinance, in the manner and form as required by law, for making the assessment set forth in the petition herein.

6. Those objectors further say that said act under which said petition was filed, entitled "An act to enable park commissioners and park authorities to make local improvements, and provide for the payment thereof," approved June 24, 1895, and in force July 1, 1895, is not in accordance with the constitution of the State of Illinois, and is therefore void.

* * * * * * *

50 9. These objectors state that a boulevard has been completely laid upon the territory described in the petition herein; that said improvement has been completed in all its details for many months last past, and that the petition herein is for the purpose of making an assessment for an improvement already completed, and is therefore void.

* * * * * * *

11. These objectors state that the West Chicago Park Commissioners have no authority under the law to make any assessment whatever, for the purposes in said petition set forth; that said improvement is an ornamental pleasureway, and can be used for only limited purposes; that the cost thereof should be paid for by said commissioners from the money derived from the park and boulevard tax, and from other sources, and not by special tax or special assessment.

* * * * * * *

51 13. Said West Chicago Park Commissioners, the petitioner herein, have no legal right or authority to act as commissioners in making said assessment and determining the amount to be assessed against the several pieces and parcels of land alleged to be benefited by said completed improvement; that said commissioners, as appears by the petition herein, are parties in interest in the matter

of said petition, and are not disinterested commissioners in the making of said assessment.

14. These objectors state that there is no statute or provision of law in force in the State of Illinois authorizing the West Chicago Park Commissioners to make a special assessment for any improvement whatever; that the petition herein and the assessment-roll filed therewith are for a special assessment for the cost of said
52 improvement, and is made to be levied upon all property benefited, and not upon all property abutting upon said improvement, and such proceedings are therefore void.

* * * * * * *

16. And these objectors further state that their respective lots and pieces of land herein are not benefited by said alleged improvement to the amount of the assessment thereof, or to any amount whatever, as is alleged in said petition and the assessment-roll herein.
53 * * * * * * *

18. That the original proceedings for the making of said improvement does not specify the nature, character, locality and description of the improvement, and is void for uncertainty.

* * * * * * *

20. That the estimate of the cost of said completed improvement was not made and approved as required by law; that no sufficient proof of service of notice by publication, posting and mailing has ever been made and filed in this cause in the manner required by law; that said special assessment is void because it is not levied in accordance with any ordinance providing for said special assessment, and because the ordinance, which is the basis of said special assessment, has been declared void; that said ordinance upon which said improvement is based is unconstitutional and void, because it provides for several distinct and independent improvements based upon altogether different and distinct acts of the legislature; that it is unreasonable and oppressive; that said assessment is void because it appears from the face of the petition, that the only ordinance which in any manner specifies the nature, character, locality and description of the improvement was an ordinance passed by the town of West Chicago, and not by the West Chicago Park
54–58 Commissioners, and that said ordinance has been declared absolutely null and void by the supreme court, and no valid estimate or valid assessment could be based thereon; that said assessment is void as to all property not abutting upon said boulevard.

* * * * * * *

For the above reasons these objectors object to the confirmation of said special assessment, and ask that the proceedings and petition herein be dismissed out of this court.

GEO. W. WILBUR,
Attorney for Objectors.

59 And afterwards and on, to wit, the 26th day of September, 1896, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Assessment by THE WEST CHICAGO PARK COMMISSIONERS for the Completed Boulevard Improvement on Douglas Boulevard from Garfield Park to Douglas Park, in the Town of West Chicago, City of Chicago. 15232.

60–66 On this 26th day of September, A. D. 1896, comes the West Chicago Park Commissioners by *its* attorney and moves the court for a default herein and for confirmation of said assessment.

And it appearing to the court that the said West Chicago Park Commissioners have complied with all the requirements of the law in making said assessment and also as to posting and sending notices to the owners of the property assessed, and that due publication of notice was made, and that due notice as required by law has been given of this application and of the making and return of said assessment, and of the time for the final hearing thereon; and no objection to said assessment having been filed except as to the real estate described below, and no defense thereto made except on behalf of the owners of the real estate for which objections have been filed.

It is ordered and adjudged by the court that a default be and is hereby entered against each and all the lots, blocks, tracts and parcels of land assessed and described in the said assessment-roll for said improvement, returned and filed in this court, as to which no objections have been filed, and that said assessment and all proceedings therein be and the same are hereby confirmed, except as to the real estate described in objections on file, and that the clerk of this court certify the assessment-roll returned by said commissioners, together with this judgment to Dennis Colbert, collector of special assessments for said West Chicago Park Commissioners, it appearing to the court that he is authorized to collect the said assessments as required by law.

The real estate for which objections have been filed is described as follows:

* * * * * * *

67 And afterwards and on, to wit, the 27th day of April, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

This day again come the petitioners herein, by their attorney, and the objectors herein, by their attorney; and said cause comes on to be heard on the legal objections to said assessment. After arguments of counsel and due deliberation by the court, it is ordered that all of said legal objections be, and are hereby, sustained.

And thereupon, on motion of the said objectors, it is further ordered that the petition herein be, and is hereby, dismissed.

Whereupon the said West Chicago Park Commissioners now here duly excepts, and prays an appeal to the supreme court of the State

of Illinois, which is allowed them on filing herein bill of exceptions within sixty days.

68 And afterwards and on, to wit, the 7th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

On this day comes the said petitioner, by its attorney, and enters its motion for a rehearing in said cause, which is continued until tomorrow.

69&70 And afterwards and on, to wit, the 8th day of May, 1897, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232. Special Assessment.

And now, on this day, said cause again comes on to be heard on the petitioners' motion heretofore entered for a rehearing in said cause. Come all the parties in interest, by their attorneys, respectively. After arguments of counsel and due deliberation of the court, it is ordered that said motion for a rehearing, as aforesaid, be, and is hereby, overruled; whereupon the said petitioners now here duly except and pray an appeal to the supreme court of the State of Illinois, which is allowed on said petitioners filing herein bill of exceptions within sixty days from this date.

* * * * * * *

71 And afterwards and on, to wit, the 6th day of April, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of Douglas Park Boulevard Assessment. 15232.

On motion of the attorney for the said petitioner, it is ordered by the court that the said cause be, and is hereby, reinstated as to all the objections on file herein, and the hearing of said objections is hereby set for May 17, 1898, at ten o'clock a. m.

72 And afterwards and on, to wit, the 18th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this day, it is ordered by the court that George W. Wilbur have leave, and such leave is hereby given to him, to file herein amended and additional objections to said assessment.

And afterwards, to wit, on the 18th day of May, A. D. 1898, there *was* filed with the clerk of said court *a* certain additional objections in words and figures following, to wit:

73 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County, of the May Term, 1898.

In the Matter of the Application of WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for the Cost of the Improvement of Douglas Boulevard from the Southeasterly Boundary Line of Garfield Park to the Western Boundary Line of Douglas Park.

Amended and additional objections filed by leave of court first had and obtained on behalf of the objectors and owners of real estate set forth and described in the objections filed on their behalf herein by George W. Wilbur on, to wit, the 16th and 23rd days of September, 1896.

First. To the objections filed in the above-entitled cause by George W. Wilbur on the 16th day of September, 1896, and on the 23rd day of September, 1896, respectively, and to the schedule of lands attached to each set of said objections, add the "amended and additional objections to judgment and to assessment," hereto attached and numbered from 1 to 32, inclusive.

____ ____,
Attorney for said Owners and Objectors.

74 *Amended and Additional Objections to Judgment and to Assessment.*

1. The ordinance for said improvement is incomplete, informal, unreasonable, unjust, oppressive, and void.

2. The ordinance for said improvement is invalid because it does not specify the nature, character, locality, and description of the said improvement.

3. Said petitioners never had any power, authority, or jurisdiction over the property of these objectors for the purposes of making said improvement.

5. The improvement to be paid for by said assessment has been changed, and it is different from the improvement described in the ordinance and proceedings herein.

6. The petition herein is informal, insufficient, and void because it does not contain a copy of the ordinance under which the said improvement was constructed, neither does it contain a copy of the ordinance under which the present proceedings are being carried on in this court.

7. Said petition herein is insufficient and void because it does not contain an estimate of the cost of the completed portions of said improvement, as is required by law. Said petition is also insuffi-

cient and void because the alleged ordinance and the alleged assessment and the alleged estimate of the cost of the completed portions of said improvement contain items which cannot be made the subject of special assessment, and they are each in other respects contrary to law.

* * * * * * *

75 10. The proceedings herein are void because the subject-matter of said proceedings has been fully adjudicated and determined by the supreme court of the State of Illinois in a proceedings lately pending in said last-named court between the Town of West Chicago and these objectors; that said Town of West Chicago in such proceedings was acting on behalf of and in the interest of the said Board of West Chicago Park Commissioners, the petitioners herein; that the subject-matter of said proceedings was the same as the subject-matter under consideration herein; that on or about the 12th day of March, 1897, an order was entered in said county court, in accordance with the mandate of said supreme court, as to all of the property of the objectors, as will fully appear by the records of said county court, ready to be produced on the hearing
76 hereof; that such order is final and binding as to the petitioners herein and as to said Town of West Chicago and as to the objectors herein, and it fully and finally determines the rights of said parties as to the assessment proceedings for the cost of the improvement of Douglas boulevard, as set forth in the petition herein.

11. The petition and proceedings herein are insufficient and void because they are contrary to the constitution of the State of Illinois, because the provisions of the statute under which such petition is filed is retroactive, and because such petition and the proceedings herein put clouds upon the titles to the property of these objectors without due process of law, and because said petition and the proceedings herein are in other respects contrary to the constitution of the State of Illinois and the laws thereof.

12. The statute under which the present proceedings are being conducted is contrary to the Constitution of the United States and in conflict with section 10 (first) of article 1 thereof.

14. Said assessment is not levied upon the several parcels of land of these objectors in proportion to the benefits alleged to come to their several pieces of property, respectively, from such improvement.

15. The proceedings herein are void because they are for the purpose of collecting for the cost of work done under void original proceedings, such original proceedings having been declared void by order and consent of the petitioners herein.

16. Said assessment is levied upon a part only of the property which is specially benefitted by said alleged improvement.

17. The said assessment upon the property of these objectors exceeds the benefits which have accrued to their said property
77 from the said improvement.

18. The said assessment upon the property of these objectors exceeds the proportionate share of the cost of said alleged improvement fairly and equitably chargeable upon their said property.

* * * * * * *

21. The alleged estimate herein was never adopted by resolution of the petitioners herein in the manner provided by law, and said estimate is therefore illegal and void.

22. The petitioners herein, in making said assessment, have not followed the requirements of the ordinance which is the basis of this proceedings, but, on the contrary thereof, have made and returned an assessment-roll which is not in accordance with the said ordinance, nor with the statutes of said State of Illinois; neither is said assessment-roll properly made and certified by said petitioners; neither does the alleged certificate of said petitioners to said alleged assessment-roll contain a description of the nature, character, and locality of the improvement.

* * * * * * *

78 28. Said petitioners did not, prior to the making of said alleged boulevard improvement, obtain the consent in writing of a majority of the owners of the frontage of the lots and lands
79 abutting on said alleged boulevard improvement; neither did the petitioners herein nor the town of West Chicago at any time have or obtain a legal consenting petition in writing, signed by a majority of the owners of lots and lands abutting on said improvement, requesting or directing either the petitioners herein or the town of West Chicago to construct the improvement referred to in the petition and proceedings herein; neither did said petitioners nor the said town of West Chicago, at the time of the construction of said improvement nor at any other time, have a consent in writing of a majority of the owners or lots and lands abutting on said improvement consenting to, requesting, or directing either said petitioners or said town of West Chicago to construct said improvement or boulevard.

* * * * * * *

30. The assessment herein is unjust and inequitable because the petitioners herein are the owners in trust and are in possession of the center one hundred and thirty feet of said boulevard for its entire length, either side of which one hundred and thirty feet is adjacent to and abutting upon the roadway on each side of said boulevard; that said one hundred and thirty feet in the center of said boulevard receives a large proportion of the benefits of said improvement, while no part of said assessment is levied against the same.

80 31. The boulevard in question herein is park property, and is owned by the petitioners herein in trust, and it is under their control and *it* used for park purposes; that it is improved with trees, walks, lights, and other improvements below the surface, and these objectors contend that the entire cost of said improvement should be paid for from the boulevard and park tax fund and from the general funds of said petitioners.

* * * * * * *

GEO. W. WILBUR,
Attorney for Certain Objectors.

81 And afterwards and on, to wit, the 18th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

STATE OF ILLINOIS,)
County of Cook,) ss:

In the County Court of Cook County.

In re Assessment by THE WEST CHICAGO PARK COMMISSIONERS for Completed Boulevard Improvement on Douglas Boulevard. Number 15232.

And now, on this 18th day of May, 1898, come all the objectors for which objections have been filed in this cause in the name of Richard Prendergast, G. W. Wilbur, W. W. Grimstead, W. P. Quinby, J. J. Parker, F. T. Colby, A. H. Meads, J. R. Ward, and Fanning and Herdlicka; and the court, having heard the evidence adduced and being duly advised in the premises, overrules all objections which are triable before the court without a jury, and the said cause, as to objections which are triable before a jury, is ordered to proceed.

82 And afterwards and on, to wit, the 24th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day come the said West Chicago Park Commissioners, their attorney, and the objectors herein, represented by George W. Wilbur, their attorney, and said cause coming on to be heard on the objections filed herein by the said objectors to the confirmation of the assessment-roll in said cause, it is ordered by the court that the cause proceed and a jury come; whereupon come the jurors of a jury of twelve good and lawful men as follows:

H. C. Steger, Sam'l Clausen, D. L. Eglin, D. S. Richards, H. P. Bennett, John Sick, T. F. Kennedy, C. B. Miller, George Steinerg, C. B. Killian, W. B. Harrison, C. H. Chamberlain, who are duly tried, elected, and sworn well and truly to try the issues joined and a true verdict rendered according to the evidence. After hearing all the evidence adduced and the arguments of counsel and the instructions of the court, said jury retire from the bar of the court to consider of their verdict, with leave to seal their said verdict and disperse. It is further ordered that said jury return into open court at the next session thereof tomorrow morning.

83 And afterwards and on, to wit, the 25th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day again come the West Chicago Park Commissioners, by their attorney, and the objectors herein, represented by George W. Wilbur, their attorney, and the jury heretofore impaneled for the trial of said cause also come with their verdict as follows:

We, the jury, find the issues for the petitioner herein, and that the property of the objectors is not assessed more or less that it will be benefited by the proposed improvement, nor more or less than its proportionate share of the cost of said improvement.

Whereupon the said objectors, by their said attorney, submit herein their motion for a new trial of said cause.

84 And afterwards and on, to wit, the 26th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this day, it is ordered by the court that George W. Wilbur have leave, and such leave is hereby given, to file herein his motion for a new trial in said cause.

85 And afterwards and on, to wit, the 26th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

Now, on this 26th day of May, A. D. 1898, come the West Chicago Park Commissioners, by their counsel, and now come the objectors for whom objections have been filed in the name of George W. Wilbur, attorney, by said attorney, and the jury heretofore called to try the issues in said objections having rendered a verdict for the petitioner and finding that the property of the objectors described in said objections has not been assessed more than it has been specially benefited by the said improvement or more or less than its proportionate share of the cost of said improvement, and thereupon the said objectors having moved the court for a new trial herein and leave given to file said motion as of this date, the court overrules said motion; to which action of the court in overruling said motion said objectors excepted.

It is hereby considered and adjudged by the court that the said assessment-roll as to each and all of the said property of the said objectors and for which objections have been filed in the name of the said attorney be confirmed, and as to each and all of the said lots, tracts, or parcels of land contained in said objections, and as to each and all of the amounts shown to be assessed by said assessment-roll against said lots, tracts, or parcels of land respectively, and as the same are therein shown to be assessed.

85½ And thereupon each of the said objectors prays several appeal to the supreme court of Illinois, which is allowed in each instance and to each objector upon his filing an appeal bond in the due form in the penal sum of two hundred and fifty dollars, with surety to be approved by the clerk of this court, and also upon the filing of a bill of exceptions herein, said bond and bill of exceptions to be filed within thirty days from this date.

86 And afterwards and on, to wit, the 28th day of May, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS to Improve Douglas Boulevard. 15232.

This day comes George W. Wilbur and moves the court to set aside the order of this court heretofore entered overruling the motion for a new trial herein.

And thereupon it is ordered that the hearing on said motion be, and is hereby, continued.

87–91 And after- and on, to wit, the 4th day of June, 1898, the following, among other, proceedings were had by and before said court and entered of record, to wit:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

And now, on this day, comes George W. Wilbur, attorney for certain objectors in the above-entitled cause, and also comes H. S. Mecartney, attorney for the petitioners herein, and now comes up for disposition the motion heretofore entered on behalf of said objectors to set aside the order overruling the motion for a new trial and for granting said motion for a new trial. In support of said motion said George W. Wilbur, attorney for said objectors, presented and read the affidavits of George W. Dorr, George W. Wilbur, and Louis R. Dyer, copies of which affidavits were on, to wit, the 3*rd* day of June, 1898, served upon the said attorney for the petitioners and filed herein on said day; and the court, after hearing arguments of counsel and being fully advised in the premises, overrules said motion and refuses to set aside the order overruling the motion for a new trial herein; to which order and ruling of the court the said objectors, by their attorney, then and there duly except.

92 And afterwards, to wit, on the 19th day of July, A. D. 1898, there was filed with the clerk of said court a certain bill of exceptions in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Cook, } ss:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Bill of Exceptions.

Be it remembered that on the hearing of the legal objections to the confirmation of the assessment-roll in the above-entitled cause before his honor William T. Hodson, acting judge of the county court of Cook county, on the 17th day of May, 1898, the following proceedings were had as to the objections filed by George W. Wilbur for certain objectors and the owners of real estate in said objections described:

Appearances: For petitioners, Mr. Francis A. Riddle and Mr. H. S. Mecartney; for objectors, Mr. George W. Wilbur.

Certain other attorneys representing various owners and objectors were present and participated in the examination, with the understanding and agreement between counsel that testimony taken on the hearing might be used by the several attorneys respectively, where the same affected the interests of their respective clients.

And thereupon the petitioners, to maintain the issues on their part, introduced the following evidence, to wit:

93 Mr. MECARTNEY: The petitioners offer an ordinance of the town board of West Chicago of March 28th, 1893, as set forth on pages 151 to 154, inclusive, of the printed abstract of record used in the hearing of this case in the supreme court, entitled "West Chicago Park Commissioners *vs.* Farber *et al.*" The specifications embodied in said ordinance and referred to on pages 151 to 154, inclusive, of said abstract, are set out on pages 199 to 208 of the same record. That document, embodying the specifications, is offered. (Same shown *infra* set out and annexed to the petition in case No. 10655.)

Mr. WILBUR: I object to the introduction of the ordinance referred to on the ground that it is informal, insufficient, and illegal, and that it was passed without authority existing in the town of West Chicago.

The COURT: That does not go to the form of the instrument, being the abstract. That is waived, is it not?

Mr. WILBUR: I don't object to it on that ground.

The COURT: The objections ought to be made now, gentlemen; let me know what they are. I don't want to admit this document as to the one and withhold — oppose it as to the other.

Mr. MECARTNEY: Hadn't we better call off the names of the attorneys present and objecting?

The COURT: No; it is considered that all the attorneys are present.

Mr. MECARTNEY: No; several are going to submit the question of benefits to the court, and their objections we are to take up later. The attorneys represented are George W. Wilbur, Richard Prender-

gast, Fanning, Herdlicka & Jandus, James R. Ward, K. K. Knapp, represented by Mr. Breeden, W. W. Grimstead, and W. P. Quinby.

The COURT: Make these objections as we go along. If there are no other objections the objection will be overruled.

Mr. WILBUR: Exception.

94 Document referred to admitted in evidence and marked "Petitioners' Exhibit 1."

Said ordinance is as follows:

The Ordinance.

An ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the city of Chicago, town of West Chicago, county of Cook and State of Illinois.

Whereas, the West Chicago park commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park boulevard, lying and situate between the southeasterly line of Garfield park (formerly known as Central park), and running thence south for a distance of 4,250 feet, more or less, to a point in sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its intersection with the west line of Douglas park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago park commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, said West Chicago park commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans, specifications, and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

Whereas, said West Chicago park commissioners have made plans, specifications, and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications, and estimates of the cost of such improvement as provided by law; and,

Whereas, said board of West Chicago park commissioners have also submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

Whereas, the corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land front-

ing on Douglas boulevard, or Douglas Park boulevard, from
95 the south line of Garfield park to the west line of Douglas park, as provided by law;

Now, therefore, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the
96 deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago park commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand, gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces, and all fresh filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago park commissioners.

Here follows at pages 199 to 208 of the record, a recitation of the specifications and plans of said proposed improvement substantially as the same are set out in the record at pages 176 to 189, and heretofore in this abstract at pp. (134 to 147). (Same set out in petition as "Exhibit B.")

SECTION 4. That the supervisor of the town of West Chicago proceeded at once to file a petition in the name of the town in the county court of Cook county for proceedings to assess the cost of the

improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago park commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

STATE OF ILLINOIS, }
Cook County, Town of West Chicago, } ss:

I, Mortimer J. Scanlan, town clerk of the town of West Chicago, in the county of Cook and State of Illinois, do hereby certify that the annexed and foregoing is a true and correct copy of an ordinance adopted and passed by the corporate authorities of the said town of West Chicago, said corporate authorities being the town supervisor, the town clerk and assessor of said town, at a special meeting held for that purpose by said corporate authorities, at the town office of said town of West Chicago, on the 28th day of March, 1893, which said ordinance was on that day duly filed and entered upon the records of the said town of West Chicago.

MORTIMER J. SCANLAN,
Town Clerk.

97 Mr. MECARTNEY: Petitioners offer the petition of the town of West Chicago in the county court in case No. 10655, set forth on pages 126 to 151 of said abstract.

Mr. WILBUR: We object to the introduction of the petition on the ground that it is incompetent and immaterial. This proceeding, as appears by the record in this case already made, is an original proceeding, standing alone: that it is an original, independent proceeding, according to the statement of counsel in his brief and throughout his contention in this case. Now, if that were true the petition which he now offers is immaterial and incompetent, and it has been fully adjudicated by the parties whom I represent, and is fully out of the way, and has nothing to do with the case of the West Chicago park commissioners under the act of 1895.

Mr. MECARTNEY: It is offered to show that there were proceedings filed for special assessment, and that they were declared void; proceedings filed in pursuance of the ordinance and declared void.

The COURT: Objection overruled, so far as I can see.

Mr. WILBUR: I take exception to the ruling of the court.

Petition referred to is admitted in evidence as "Petitioners' Exhibit 2," and is as follows:

(The said petition in said cause No. 10655, in said county court, with the specifications, plans, and exhibits embodied therein and annexed thereto, and the ordinance of March 28, 1893, annexed thereto, are as follows:)

98 To the honorable the judge of the county court of said county:

Your petitioner, The Town of West Chicago, being a regularly organized and existing township in the county of Cook and State o

Illinois under and by virtue of the statutes of said State providing for township organization, respectfully petitions this honorable court, in accordance with the statutes in such case made and provided, as follows:

Your petitioner shows that the West Chicago park commissioners are a board of park commissioners now existing in a town which is now included within the limits of the city of Chicago and State of Illinois, having authority by law to acquire land and the appurtenances, in trust, for the inhabitants of such town and of a division or a part of such city, and of such parties or persons as may succeed to the rights of such inhabitants, and for the purpose of a public promenade and pleasure grounds and ways, but not for any other use or purpose without the consent of the majority by frontage of the owners of the property fronting on the same, and without the power to sell, alienate, mortgage or encumber the same, which board of park commissioners was duly organized under and by virtue of an act of the General Assembly of the State of Illinois, entitled "An act to amend the charter of the city of Chicago and to create a board of park commissioners and authorize a tax in the town of West Chicago, and for other purposes," approved and in force February 27, 1869, and of the acts and parts of acts amendatory thereto; that by the provisions of said act, the said board of West Chicago park commissioners was given full and exclusive power to govern, manage, and to direct all parks, boulevards and ways authorized by that act and by them purchased, made, laid out or established, to lay out, regulate, make and improve the same, pass ordinances and issue and enforce orders for the regulation and government of the same; to levy special assessments on all property by them deemed benefited by the purchase, opening and improvement of such parks, boulevards and ways as provided and limited by said act, and in general was given by said act power and authority to lay out, establish and improve parks, boulevards and pleasureways as described in said act; that in and by said act above mentioned, and by a subsequent act of the General Assembly of the State of Illinois, entitled "An act supplemental to an act to amend the charter of the city of Chicago, to create a board of park commissioners, and
99 authorize a tax in the town of West Chicago, and for other purposes, approved February 27, 1869," approved and in force April 19, 1869, it was provided that said West Chicago park commissioners should have the power and authority to locate the boulevard, promenade, driveway and pleasureway in such manner as in said act and supplemental act are more specifically described, so as to connect the several parks so authorized by said original and supplemental acts to be located.

That pursuant to the authority conferred upon said West Chicago park commissioners by virtue of said original and supplemental acts, such commissioners did locate a boulevard or pleasureway in the city of Chicago, Cook county, Illinois, and within the limits defined by said original and supplemental acts, between the southeasterly line of Barrypoint road, now known and designated as Colorado avenue, said Barrypoint road or Colorado avenue being

the southeastern boundary of Garfield park; and thence running south a distance of 4,250 feet, more or less; and thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, said Douglas park being one of the parks located and established under and by virtue of said original and supplemental acts, and now under the management and control of said commissioners; that said boulevard or pleasureway so located and established by said commissioners connects Garfield park (the same being one of the parks so located pursuant to the provisions of said original and supplemental acts, and now under the management and control of said commissioners) with the said Douglas park, and that such connection by said boulevard between said Garfield and Douglas parks is acurately shown and de-
100 fined upon the route, plan and design indicated and specifically described in the drawings or maps hereto attached and marked "Exhibit A."

That in the location of said boulevard said commissioners were authorized by said acts above mentioned to locate the same in any part of the town of West Chicago, and in sections 14, 23 and 24, T. 39 N., R. 13 E. of 3d P. M., all of said sections lying and being situate in the town of West Chicago and within the city of Chicago, as set forth in said original and supplemental acts.

That the jurisdiction of said West Chicago park commissioners was, by said original and supplemental acts, made and now is absolute and undisputed; and it was further provided by said original and supplemental acts that said West Chicago park commissioners should have the right and authority to cause property benefited by the location of such boulevard, to be specially assessed to pay for the improvement thereof.

And your petitioner further shows that under and by virtue of the provision of the acts of the General Assembly, above cited, the said West Chicago park commissioners did proceed about the year 1869 and 1870 to lay out and acquire the lands necessary for the boulevards hereinabove designated and hereinafter more particularly described by the maps and plan hereto attached and heretofore referred to as "Exhibit A," and did acquire by condemnation, purchase, gift or otherwise, all of the lands included in said boulevard or pleasureway so described, and did enter upon the possession of the same during or about the year 1869 or 1870; that said commissioners did mark out the boundaries of said boulevard, and that said boulevard so acquired by said commissioners was defined as a piece or parcel of land not less than 250 feet in length at any point, nor more
101 than 400 feet in width at any point, as will be shown by maps and plans thereof hereto attached and so marked "Exhibit A."

That said commissioners have remained in possession and control of said boulevard or pleasureway from about the year 1870 hitherto, and that the same has never been improved as a boulevard or pleasureway and promenade as it was intended that the same should be improved, by the provisions of the said original and supplemental acts and other acts of the General Assembly of the State of Illinois, passed and approved subsequent to the said original and supple-

mental acts, nor according to the authority and power vested in said West Chicago park commissioners under an act of the General Assembly of the State of Illinois entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873; under and by virtue of which said act last cited the corporate authorities of towns in which any such parks or boulevards are located, were authorized to levy a special assessment or special tax on the contiguous property abutting on any such boulevard, for the purpose of paying the cost of improving the same; that said boulevard so proposed to be improved and so connecting Garfield park with Douglas park, is a part and parcel of the original boulevard and system of parks and pleasureways authorized and designated to be established and acquired by the West Chicago park commissioners by virtue of said original and supplemental acts, and was intended for the purpose of connecting said Garfield park with said Douglas park, according to the provisions of said original and supplemental acts.

102 And your petitioner further shows that said West Chicago park commissioners are now in control and management of said boulevard so proposed to be improved, and have been in the possession and control thereof for a period of more than twenty years; that all of said boulevard lies and is situated in the town of West Chicago, Cook county, Illinois.

And your petitioner further shows that the said West Chicago park commissioners, desiring to improve that certain boulevard hereinbefore described as Douglas boulevard or Douglas Park boulevard so extending south from the southeasterly line of Barrypoint road or Colorado avenue above mentioned, a distance of 4,240 feet, more or less, and thence due east to the intersection thereof with the west line of Douglas park, a distance of 4,490 feet, more or less, did carefully designate the line of said improvements and did prepare a plan or plans thereof, and did prepare estimates of the cost of such contemplated improvement, together with specifications therefor, and did transmit such plan, specifications and estimates to the supervisor, assessor and clerk of the town of West Chicago, in which said boulevard is located, said supervisor, assessor and clerk being the corporate authorities duly designated by said act of the General Assembly so approved May 2, 1873, as the corporate authorities of said town to levy a special tax or special assessment for the purpose of paying the cost of such contemplated improvement of said boulevard; that said West Chicago park commissioners also obtained the consent and authority in writing in due form of law of the owners of a majority of the property or land abutting upon said boulevard so proposed to be improved, by the said consent or petition of a

103 majority of such owners of the property or land so abutting upon said boulevard, the said West Chicago Park Commissioners were asked and petitioned to make such improvement according to the plans and specifications and estimate of the cost thereof so transmitted and presented by the said West Chicago

park commissioners to the supervisor, the assessor and town clerk as corporate authorities to carry out the purposes and objects of the said statute hereinbefore referred to as having been approved May 2, 1873.

And your petitioner further represents that said petition was found by said West Chicago park commissioners and determined by them to contain the consents and signatures and petition of the owners of a majority of the lots, lands and property fronting and abutting on said Douglas boulevard or Douglas Park boulevard so proposed to be improved, to the making of such improvements, and to the making and levying of a special tax or special assessment upon the property abutting on said boulevard, for the purpose of paying the cost of such improvement as proposed.

And your petitioner further represents that the said supervisor, assessor and clerk, the duly designated and constituted corporate authorities of the town of West Chicago as aforesaid, also found that the owners of a majority of the property, lots and land fronting and abutting on said boulevard between the south line of Barrypoint road or Colorado avenue, running south a distance of 4,250 feet, more or less, thence east a distance of 4,490 feet, more or less, to the intersection thereof with the west line of Douglas park, in said city of Chicago, had in fact consented to the improvement of said boulevard as and for a boulevard and driveway according to the plans and specifications so transmitted and presented to said corporate authorities of the town of West Chicago, as aforesaid, and to the making and levying of a special assessment or special tax upon the property, lots and lands contiguous to and abutting upon said boulevard so proposed to be improved, for the purpose of paying the cost of said improvement, the cost and expenses of making, levying and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago park commissioners, so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said boulevard, for the purpose of paying the cost thereof; and that the proceedings therefor and in that behalf should be conducted and carried forward in pursuance of the provisions of the act of the General Assembly of the State of Illinois, entitled "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, and in force July 1, 1873, and in pursuance of any and all other statutes of the State of Illinois in such case made and provided, for the purpose of making, completing and paying for the improvement of said Douglas boulevard according to said plans, specifications and estimates.

104–118

The plan of said improvements so to be made upon said Douglas boulevard hereinbefore referred to as "Exhibit A" follows herewith and is made a part hereof:

The specifications so made by said West Chicago park commis-

sioners and so transmitted and presented to said corporate authorities of said town of West Chicago herewith follow, and are marked "Exhibit B," and made a part hereof.

* * * * * * *

119 "EXHIBIT C."

Estimate.

Estimate of approximate cost of the improvement of side driveways and lawns on Douglas boulevard from Douglas park to Garfield park, according to "Drexel Boulevard plan," with one driveway asphalt pavement and one driveway granite macadam (60 feet wide) on each side.

46,234 cu. yds. of common filling at 50c. per yd	$23,117 00
5,832 cu. yds. of black soil at 75c. per yd	4,374 00
2,250 sq. yds. macadam pavement at $1.25 per yd	2,812 50
120 33,440 lin. feet of "curb and cutter" at 75c. per ft	25,080 00
36,137 sq. yds. asphalt pavement at $3 per yd	108,411 00
35,875 sq. yds. granite-surface road at 85c. per yd	30,493 75
136,760 sq. ft. cement sidewalk at 20c. per ft	27,352 00
344 lamp posts and lamps at $18 each	6,192 00
575 trees at $8 each	4,600 00
84 catch-basins at $30 each	2,520 00
4,200 lin. ft. of 9-in. pipe connections at 40c. per ft	1,680 00
22,200 sq. yds. lawn seeding at 2c. per yd	444 00
For superintendence, engineering, etc., 10 per cent	23,707 60
Total	$260,783 85

Frontage, 15,715 feet.
Amount per front foot, 16.59\frac{4}{10}$.
Chicago, February 21, 1893.

Your petitioner further shows that upon the transmission and presentation by said West Chicago park commissioners of said plans, specifications and estimates, by the corporate authorities of the town of West Chicago, and of the receipts by said corporate authorities of said town of the plans, specification- and estimates, the corporate authorities of said town of West Chicago, constituted as provided by law of the town supervisor, the town assessor and the town clerk of said town, at a special meeting called for that purpose, and held at the office of said town of West Chicago, *and* the 28th day of March, 1893, the said corporate authorities determined by ordinance
121 duly adopted and passed by said town authorities, and entered upon the records of such town, that such improvements as were described in the plans, specifications and estimate so transmitted and presented to said corporate authorities of said town, as above stated, should be made, pursuant to the statute in such cases made and provided, and that the expense of such improvement

should be raised wholly by special assessment upon the property contiguous to and fronting or abutting upon said boulevard so proposed to be improved; which said ordinance recited the transmission of the said plans, specifications and estimates by the said West Chicago park commissioners to said corporate authorities of the town of West Chicago and embodied the substance thereof, heretofore shown as having been transmitted and presented to said corporate authorities of said town of West Chicago by said West Chicago park commissioners, and that said ordinance provided that such improvement of said Douglas boulevard or said Douglas Park boulevard from the southeasterly line of Barrypoint road or Colorado avenue, running thence south a distance of 4,250 feet, more or less, and thence east a distance of 4,490 feet, more or less, to the intersection thereof with Douglas park, in said city of Chicago, should be made, and that the cost of said improvement so contemplated should be paid from the money raised from a special assessment upon the contiguous property fronting and abutting upon the said boulevard so proposed to be improved, as is by the statutes of the State of Illinois in such case made and provided.

And your petitioner further shows that said ordinance further directed the supervisor of the said town of West Chicago as the only constituted officer of the corporate authorities of said town
122 for that purpose, to file a petition in the name of the town of West Chicago, in the county court of Cook county as provided by law, for such proceedings as might be necessary to assess and levy a special assessment for the cost of such improvement upon the property, lots and lands fronting and abutting upon said Douglas boulevard or Douglas Park boulevard as aforesaid, the certified copy of which said ordinance is hereto annexed, filed herewith and marked "Exhibit D," and made a part of this petition.

And your petitioner further shows, and it will more fully appear to this honorable court by reference to the map or plan of said contemplated improvement, that the same is one whole, continuous and regular improvement of a single boulevard lying wholly within the town of West Chicago, and within the park district subject to taxation and assessment for park and boulevard purposes.

And your petitioner further shows by reference to the estimates of the cost of such boulevard improvement, that the estimate of the cost thereof aforesaid was and is prepared, made up and presented to said corporate authorities of said town of West Chicago by said park commissioners, as the estimate of said West Chicago park commissioners for the cost of said contemplated improvement.

* * * * * * *

And your petitioner therefore respectfully prays, pursuant to the provisions of the statute hereinbefore referred to as having been approved May 2, 1873, that this honorable court will take cognizance of this petition for the purposes hereinbefore set forth, and this honorable court will appoint commissioners, pursuant to the provisions of said act of the General Assembly, to assess the cost of such

improvement to be made upon said boulevard as aforesaid
123 upon the property contiguous to and abutting thereon, in the proportion as each separate lot, piece or parcel of property or land so abutting and fronting thereon may be benefited by such improvement, and in such manner as is required by law in such cases made and provided, and that the commissioners so to be appointed by this honorable court may make and levy such special assessment or special tax for the cost of such contemplated improvement as hereinbefore described and set forth, and that such commissioners shall make and return to this honorable court an assessment-roll in the manner provided by law, in which assessment-roll the amount of the special assessment or special tax so assessed and levied by such commissioners so to be appointed, upon the property contiguous to said boulevard, shall be stated and set forth in proper and appropriate columns.

And your petitioner further prays that said special assessment so to be made by such commissioners upon the contiguous property so fronting and abutting on said boulevard so to be improved may be divided by the order of this court into installments, the first of which shall be twenty per cent. of the total of said assessment so to be levied against each separate piece of property, lot or land so abutting on said boulevard so to be improved, which installment of twenty per cent. shall be due and payable on and after the date of confirmation of said special assessment; and that the remainder of the amounts so to be assessed shall be divided into four equal installments, payable annually thereafter, and each of said four installments shall bear interest at the rate of six per cent. per annum from the 1st day of October, 1893, as provided by law.

And your petitioner further prays for such other and further proceedings in the premises as are provided by law, and for such orders, directions and proceedings by this honorable court, as may be necessary or requisite for the proper levy and collection of said special assessment or special tax so to be made to pay the cost of said contemplated improvement.

And your petitioner will ever pray, etc.

TOWN OF WEST CHICAGO.
By FRANK J. NIEHOFF, *Supervisor.*

FRANCIS A. RIDDLE,
Attorney for Petitioner.

Here follows ordinance, given above as Petitioners' "Exhibit" 1.

124 Mr. MECARTNEY: It is conceded that the decision in the case of People *vs.* Culver, 161 Ill., page 89, declaring an ordinance void in regard to Douglas boulevard special assessment affects the ordinance which is offered and the proceeding in which this petition was filed, and related to this identical proceedings declared void.

Mr. WILBUR: I will concede that, but I depend upon three other decisions.

Mr. MECARTNEY: There is no objection, I take it, as a concession

from all of you that the Culver decision affected this identical proceeding, and that ordinance which has just been offered.

(There was no objection and all counsel present conceded the fact.)

GEORGE W. DORR, a witness called on behalf of the petitioners, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows:

Mr. WILBUR: I object to the introduction of oral testimony at this time.

Q. What is your name?
A. George W. Dorr.
Q. Have you been connected with the West Park commissioners?
A. Yes, sir.
Q. In what capacity?
A. Engineer—civil engineer.
Q. Did you have anything to do in that capacity with the laying down of the improvement on Douglas boulevard from Garfield park to Douglas park?
A. Yes, sir.
Q. What did you have to do with it?
A. I had the whole improvement from the time I went there until I left there in 1896, I think it was; in 1897 I left there.
Q. In what capacity?
A. I had charge of the entire work of improving Douglas boulevard.
Q. Has that work been completed or not? Has that improvement been laid down?
A. Yes, sir.
125 Q. When was it completed, or about when?
A. I think it was completed in the latter part of 1895; that is my recollection.
Q. It started about when?
A. About 1893; different portions of it went down at different times; it was not all simultaneously.

Cross-examination.

By Mr. WILBUR:

Q. Do you know the month in which that improvement was started?
A. In which that improvement was started?
Q. Yes.
A. Well, which part of the improvement?
Q. Any part of it. When was the first work done on the improvement?
A. I think it was in 1894—May, I think, of 1894.
Q. The first dirt was turned in May, 1894?
A. No, not the first dirt turned. They were putting in dirt in the winter preceding that. The filling began in 1893.

Q. That was the filling for the lawn, was it not?
A. No, sir.
Q. Filling for the sides?
A. For the sides; yes, sir.
Q. You say in the fall of 1893?
A. Yes, sir.
Q. Why do you say it was commenced in May, 1894?
A. Well, because actual work on the curbing began in May.
Q. When was the last work done?
A. I think about the fall of 1895; last part of 1895.
Q. Are you quite positive as to the time of the commencement and completion of this work within a day or so?
A. Yes, sir.
Q. Was the work carried on continuously during those years?
A. Yes; carried on right along, but went on slowly.
Q. That would be the winter of 1893 and 1894 and the summer of 1894 and fall, and through that winter up to the fall, rather, of 1894?
A. 1895.
126 Q. In the fall of 1895?
A. Yes, sir.
Q. You were there all of the time?
A. Yes, sir.
Q. The work covered about the space of two years?
A. Nearly three years—about three years; yes, sir.
Q. Can you give us the month in which this work was commenced?
A. I think in September or October, 1893, the filling began. I will not be positive about that. I haven't my notes here.
Q. Can you furnish us that date?
Mr. MECARTNEY: Yes; I will furnish that. It was either then or later.
A. It was not earlier, and I know the date of finishing is correctly stated. It was in the fall of 1895.
Q. Then, in 1895 everything was all done, even to the grass plats in the centre and trees and everything? It was finished, this work, in the fall of 1895, was it?
A. Yes, sir.
Q. You mean by that the sidewalks were laid and all the curbing and everything?
A. Yes, sir.
Q. There was nothing more to do in regard to any matter involved in this assessment?
A. I think the work was completed in the fall of 1895. That is my recollection.
Q. Everything involved in this assessment?
A. Everything involved in this assessment; the lawn space between the two trees and everything done; a little shaping up, possibly, but that is not in this case.

Mr. MECARTNEY: I offer now from the certified printed copy of

the proceedings of August 4, 1896, in which it is recited upon the face of it, "Official record, published by authority of the board of West Chicago park commissioners," an ordinance, estimate, and resolution of that date, referred to in the petition in this present case, pages 1700 and 1701, comprise the offer, with the first page, showing the date of the proceedings, as "Petitioners' Exhibit 3."

127 Mr. GRIMSTEAD: I object to that because the petition sets out the fact that the ordinance under which the petition was filed was passed on the 14th of July.

Mr. MECARTNEY: That is right. I want to prove that variance in the statement, and ask leave to amend the statement in the petition. The date is misstated.

The COURT: You have a right to amend that petition without evidence on that.

Mr. MECARTNEY: I will not draw the order now, but I can do that later.

Mr. WILBUR: I object to the introduction of the ordinance on the ground that it is incompetent and insufficient because it does not state the nature, character, locality, or description of the improvement.

Objection overruled; to which ruling of the court counsel for objectors then and there duly excepted.

Said ordinance, being "Petitioners' Exhibit 3," is as follows:

Ordinance of West Chicago Park Commissioners, Passed August 4, 1896.

128 An ordinance for a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the southeasterly line of Garfield park (formerly known as Central park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook and State of Illinois.

Be it ordained by the West Chicago park commissioners, in regular meeting assembled:

SEC. 1. That whereas the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case number 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special-assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore and on the 28th day of March, A. D. 1896, declared void by the supreme court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black-earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers, and superintendence of work: Now

129 Therefore, be it ordained:

SEC. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such costs be paid by general taxation, viz: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th, and in force July 1, 1895.

SEC. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

SEC. 4. This ordinance shall be in force from and after its passage.

"Be it resolved and ordered, That the following estimate be adopted as the estimate of this board, of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park, to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, and that the counsel of this board be, and he is hereby directed to file a petition in the county court of Cook county for proceedings to specially assess the estimated cost of said improvement, in accordance with the act in said ordinance mentioned.

Estimate of Cost of Improvement and Report Thereon.

The following is an estimate made by the West Chicago park commissioners of the cost of the boulevard improvement on Douglas boulevard, from the southeasterly line of Garfield park to the west line of Douglas park, in the town of West Chicago, in the city of Chicago; said estimate being made in pursuance of an ordinance of the West Chicago park commissioners, passed on the fourth (4th) day of August, A. D. 1896, and providing for a special assessment to pay the cost of said improvement; which said estimate includes labor, materials, and all other expenses attending the making of the same, and is verified by the books and vouchers of said commissioners relating thereto, and includes the cost of making and levying the new special assessment provided for in said ordinance:

130 *Estimate.*

Asphalt paving	$110,420 71
Macadam paving	35,087 81
Combined curb and gutter	28,045 34
Cement sidewalk	24,262 26
Filling	17,290 20
Trees	1,110 30
Catch-basins and connections	3,819 59
Gas-lamp connections	2,106 00
Manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection.	19,770 51
Expense of making and levying this assessment	7,287 59
Total cost of improvement	$250,207 20"

131 Mr. MECARTNEY: Now, on preliminary hearing before the court, I guess that is all.

The COURT: Are there any notices to be introduced?

Mr. MECARTNEY: I will offer the notices and proof of publishing, posting and mailing, and files.

(Said notices so offered in evidence, together with the files, are made a part of the record prepared by the clerk herein, and are made a part hereof.)

Mr. WARD: On behalf of the objectors represented by me, I desire to file a written motion. I move the court to dismiss the petition herein, first, because petitioners have failed to prove all the material allegations contained in said petition; second, the evidence introduced by petitioners is not sufficient to sustain such petition and proceedings; third, that the evidence introduced by the petitioners is insufficient to warrant and support a judgment of confirmation.

Said written motion is as follows:

The objectors, A. S. Farber *et al.*, by James R. Ward, their attorney, move the court to dismiss the petition herein filed and arrest the proceedings thereon:

1. Because said petitioners have failed to prove all the material allegations contained in said petition.

2. Because the evidence introduced by the petitioners is not sufficient to sustain said petition and proceedings.

3. Next, the evidence introduced by the petitioners is insufficient to warrant and support a judgment of confirmation against the several pieces of property owned by these objectors, and those objectors hereby join herein. Wherefore, etc.

132 Mr. WILBUR: I adopt the motion by Mr. Ward.

Mr. QUINBY: I do the same.

Mr. BREEDEN: It is understood objections filed by one objector apply to all.

The COURT: You are entitled to file separate motions or all can follow the motion of one, but as to verbal objections I will allow you all to take advantage of that filed by any one.

Motion overruled; to which ruling counsel then and there excepted.

The COURT: What is your point, Mr. Quinby?

Mr. QUINBY: It is that the park commissioners have not obtained a majority of the frontage for the improvement.

NATHAN G. MOORE, a witness called on behalf of objectors, having been first duly sworn, was examined in chief by Mr. Quinby, and testified as follows:

Q. What is your name?
A. Nathan G. Moore.
Q. Are you an attorney-at-law?
A. Yes, sir.
Q. A member of the firm of Wilson, Moore & McIlvaine?
A. Yes, sir.

* * * * * * *

Mr. WILBUR:

Q. Were you present in court at the time of the disposition of the original proceedings for the improvement of Douglas boulevard, known as 10655?
A. Yes, sir.
Q. And you met the attorney, Mr. Riddle, the attorney for the park board?
A. Yes; two attorneys, Mr. Riddle and Mr. Prendergast.
Q. Was there exhibited in court at that time what pretended to be or purported to be a consenting petition for the making of this boulevard?

Objected to as immaterial and irrelevant.

133 A. Yes, sir.
Q. Did you see that petition?
A. Yes, sir.
Q. And was it examined by yourself?
A. I looked it over; yes, sir. I did not examine it with any great care.
Q. Did you have a conversation with Riddle in regard to that petition?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Did Mr. Riddle make a statement in regard to the sufficiency or insufficiency of that petition?

Objected to as immaterial. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Was there any effort made on the hearing of that case to prove the sufficiency of the petition offered at that time?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Did that petition on its face purport to contain the majority

in frontage in feet along the improvement signed by the property-owners?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. WILBUR: I now call upon the attorney for the park board to produce the original petition.

Mr. MECARTNEY: Produce it yourself.

Mr. WILBUR: I want a rule on the petitioner to produce the original consenting petition. It is within his power.

The COURT: I cannot make any order of that kind. There is a way for you to get such papers in if you want them.

134 FRANCIS T. COLBY, a witness called on behalf of the objections filed by him, having been first duly sworn, testified as follows:

My name is Francis T. Colby. I am of lawful age and an attorney-at-law. I reside in Chicago.

* * * * * * *

Mr. WILBUR:

Q. Were you in court when the order of reduction in the original assessment, known as 10655, was entered?

A. Yes, sir.

Q. Did you represent property involved in that order?

A. Yes, sir.

Q. Was Mr. Riddle in court?

A. Yes, sir.

Q. Did you see the consent petition in the original proceedings?

Objected to.

The COURT: It is not material. If there is anything in the point at all the petition speaks for itself. This is secondary evidence and wholly incompetent.

Q. Did you have any conversation with Mr. Riddle in regard to that consent petition?

A. Yes, sir.

Q. State what Mr. Riddle said in regard to that.

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Q. Was the consenting petition ever offered in evidence at the time of the entry of the order?

Objected to. Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. COLBY: You haven't got that petition here?

Mr. MECARTNEY: No.

Mr. COLBY: Where is that?

Mr. MECARTNEY: I haven't seen it for a long time.

135 Mr. MECARTNEY: Let the plans in the original petition in case No. 10655, being the original assessment proceedings, be

considered as a part of the offer of said petition made on the part of the present petitioners yesterday, if there is no objection.

Mr. WILBUR: Then you have offered the whole ordinance. Do you offer the estimate?

Mr. MECARTNEY: Yes.

Mr. WILBUR: And the resolution?

Mr. MECARTNEY: Yes.

Mr. WILBUR: I have an objection as to the sufficiency of the estimate. This estimate is not signed and it contains things which cannot be made the subject of a special assessment.

The COURT: What are the matters?

Mr. WILBUR: Trees, gas-lamp connections, manhole covers, sand, cement, brick, pipe, general labor, engineering, surveying, and inspection. I further object to the estimate because it is not signed by the petitioner, and further because it was not adopted by the resolution as required by the law under which we are proceeding, which is preliminary to the filing of the petition.

Mr. MECARTNEY: The resolution was offered yesterday.

The COURT: All those things are subjects of special assessments for local improvements. If the ordinance provides for them it is sufficient, and the offer shows that they adopted that.

Mr. WILBUR: I offer in evidence a certified copy of the order entered in the county court in case No. 10655, which order was entered the 12th of March, 1897.

Order referred to marked "Wilbur Exhibit 1," and is as follows:

136 In the County Court of Cook County, Illinois.

In the Matter of the Petition of the Corporate Authorities of the Town of West Chicago for the Appointment of Commissioners to Make an Assessment to Pay the Cost of the Improvement of Douglas Boulevard from the Southeasterly Line of Garfield Park to the West Line of Douglas Park, in the Town of West Chicago, Cook County, Illinois.

Now, on this day, come the owners of certain real estate hereinafter described, by George W. Wilbur, their attorney, and file herein certain remanding orders from the supreme court of the State of Illinois, in which the judgment of confirmation in the above-entitled suit is reversed and said matter remanded, said causes being known in the supreme court as Thomas F. Farrell *et al. vs.* Town of West Chicago—general No., 3737; James Connor *et al. vs.* Town of West Chicago—general No., 3767—and Mary White *et al. vs.* Town of West Chicago—general No., 4259—and move the court that said cause be redocketed in this court in so far as it relates to the property hereinafter described; and the court being fully advised in the premises, it is ordered that said remanding orders may be filed herein and said cause redocketed in so far as it relates to the property hereinafter described.

And now again, on this day, come the said parties, by their said attorney, and move the court to expunge from the record herein a

certain order entered in the above-entitled cause on or about the 3rd day of October, 1896, in so far as said order relates to the property described in this order, in which order said petitioner at-
137–159 tempted to annul and set aside and have held for naught all proceedings in the above-entitled matter, and it appearing to the court that said order was entered inadvertently as to such property, and that the court had no jurisdiction in the premises, it is ordered that said order be exponged from the records of this court in so far as it relates to the property hereinafter described.

And now again come said parties, by their said attorney, and move the court to enter an order herein in accordance with the opinion of said supreme court relating to the property hereinafter described, and the court being fully advised in the premises, it is ordered and adjudged that the judgment of confirmation in the matter of said special assessment, in so far as it relates to said property hereinafter described, be set aside and held for naught; and—

It is further ordered and adjudged that all proceedings in the above-entitled matter, in so far as they relate to the property hereinafter described, be set aside and held for naught. It appears to the court that this court was without jurisdiction in the premises to enter an order or to take any proceeding at any time in said matter as to said property herein described.

The property hereinabove referred to, together with the names of the owners thereof respectively, is described as follows, to wit:

160 * * * * * * *

Mr. WILBUR: I have nothing further to offer. I don't know whether everything is preserved in the motion, but I will renew the motion on behalf of the objectors that I represent that the
161 court sustain the objections and dismiss the proceedings on the grounds that I have stated in my argument.

Mr. MECARTNEY: Counsel for the petitioner insists that they have been passed on.

Mr. WILBUR: I have argued two or three new ones.

The COURT: If the objections were in any shape. Part were filed before and part are new.

Mr. WILBUR: I ask the court to bring the objections in here by tomorrow morning.

Mr. MECARTNEY: I make this suggestion. Counsel has covered everything that he wants. He has covered about everything that he could cover.

The COURT: The objections are what the supreme court looks at, and not what counsel argues here.

Mr. WILBUR: I offer in evidence the agreement in case No. 10655, signed Francis A. Riddle and Myron A. Decker.

Objected to as incompetent and immaterial.

Objection sustained; to which ruling of the court counsel for the objectors then and there duly excepted.

Mr. MECARTNEY: In regard to these new objections of Mr. Wilbur, to save time, if there can be a ruling on all these preliminary objections, I will not object to these being filed.

The COURT: I will allow them to be filed. I cannot cull them out.

The COURT: There is no evidence on this hearing on any of these matters to sustain any of these objections. It depends upon the admission of testimony, in my judgment, and I am satisfied, from all I can hear, and we have gone into it very fully, that no objections have been made here that are sustainable. The only thing I am in doubt about is on that question of consent. How far, in
162 subsequent proceedings, an objector has the right to come in and take advantage of that prior consent, and since counsel have cited no authorities to me bearing specifically on that point, I think I am justified in overruling the legal objection, subject to the right of Mr. Breeden and of this other gentleman (referring to Mr. Robertson).

Mr. BREEDEN: You do not pass upon the objections that I now make at all.

The COURT: I reserve that matter.

Mr. GRIMSTEAD: Let the record formally show an exception on behalf of all the objectors to the order of the court overruling the legal objections.

Adjourned to 9.30 a. m., May 20, 1898.

FRIDAY, *May* 20, 1898—9.30 a. m.

Court met pursuant to adjournment.

Appearances: Mr. H. S. Mecartney, representing the petitioner; Mr. George W. Wilbur, representing certain objectors.

Mr. MECARTNEY: We are ready to proceed with the trial on the merits.

Mr. WILBUR: In my talk the other day I was interrupted a number of times, and there is one point which is very important to us and which I spoke of——

The COURT: Well, your objections have all been overruled. Now we are ready for the jury trial.

Mr. WILBUR: I want to enter an exception to the order of the court overruling the legal objections filed herein on behalf of the objectors represented by myself, George W. Wilbur. I want to enter a motion to dismiss the petition herein on the ground that
163 & 164 the petitioners herein have not made a *prima facie* case.

The COURT: File the motion in writing; then we will know what we are getting at. You have got one motion in writing to that effect.

Mr. MECARTNEY: Petitioner is ready to go to trial on the merits if any one wants a jury.

Mr. WILBUR: We will take a jury. Will your honor permit me to introduce one or two matters of record in the original case which I omitted? I think one of them was introduced by the counsel on the other side.

The COURT: What are they?

Mr. WILBUR: Did you introduce the entire petition in the original case?

Mr. MECARTNEY: I did.

Mr. WILBUR: With everything that is in it?
Mr. MECARTNEY: That is right.

* * * * * * *

165 Mr. WILBUR: It is conceded that all exhibits attached to the petition in 10655 are a part of the petition and are offered by you?
Mr. MECARTNEY: Right.
Mr. WILBUR: It is conceded that the exhibits attached to the petition are true and state the facts?
Mr. MECARTNEY: I don't know whether they are true or not.
Whereupon a jury was impaneled to try the issues on the merits as to the property objected for herein by George W. Wilbur, and the jury, having been duly sworn to try issues on the merits, were sent by the court to view the property.
The following proceedings were thereafter taken.
Adjourned to 10.00 a. m. May 24, 1898.

MAY 24, 1898—10.00 a. m.

Court met pursuant to adjournment.
The jury having been completed, the court directed the jury to view the premises involved in the assessment, in the charge of an officer of the court.
Thereupon the court adjourned until Wednesday, May 25, 1898, at 10.00 a. m.

166 WEDNESDAY, *May* 25, 1898—10.00 a. m.

Court met pursuant to adjournment.
Present: The same counsel as of yesterday.
Mr. WILBUR: If the court please and gentlemen of the jury, you know what this assessment is about. Now, the point to be determined is, who shall pay for it, and, after determining that, how much should be paid, if anything? Our evidence in this case will be that the park board has charged against the cost of this improvement a great many thousand dollars which did not go into the improvement at all.
Mr. MECARTNEY: That is objected to as incompetent; that should have been shown before the court, if there was any such. That is objected to as a statement that is entirely malicious and misleading.
The COURT: It is improper. The only question is, is the property assessed more than it will be specially benefited; and second, is it assessed more or less than its proportionate share of the cost? Those are the only two questions.
Mr. WILBUR: Second, we will show the property of the objectors, a large part of them, is assessed two or three times the cost of the improvement that is put down in front of their property.
Mr. MECARTNEY: That is objected to as entirely improper also.
The COURT: Yes; the jury have nothing to do with the question of costs.
Mr. WILBUR: That goes to the question of benefits.
The COURT: The jury have nothing to do with whether it costs much or little.

Mr. WILBUR: Does your honor hold I cannot show that the property on one side of the street is not benefited more than the cost of the improvement, and the park board made a profit on it?

167 The COURT: Mr. Wilbur, I have already ruled that this jury tries two issues: First, is the property assessed more than it will be benefited? Second, is it assessed more than its proportionate share of the cost of the entire improvement? Those are the two questions you have got to try.

Mr. WILBUR: I offered evidence on the hearing of the legal objections and asked questions as to the difference between the cost of the asphalt and the macadam, and you said that went to the question of benefits, and my question was excluded.

The COURT: No; I remember distinctly; I asked you why you offered that kind of evidence, and you said it was on the question of the proportionate share of the cost. I said that is a question for the jury.

Mr. WILBUR: I did that for the purpose of showing one improvement was worth three times as much as the other.

Mr. MECARTNEY: I object to that statement. Counsel ought to know better than to make such statements as that.

Mr. WILBUR: That is the point I make, that it is more than it has cost.

The COURT: That is not the question. You are not trying whether it has cost more than it ought to. The only question is, is it assessed more than its proportionate share? You have got to get the proportion in there.

Mr. WILBUR: So we get back to the question what did it cost.

The COURT: I hold that you cannot show what it cost. It is not for the jury to try, and I don't want the jury to get mixed up.

168 Mr. WILBUR: I take an exception to the ruling of the court, and I will call Mr. Dorr.

Mr. MECARTNEY: Wait until I get through. Petitioner offers certified copy of the ordinance of August 4th, 1896, which was offered on the preliminary hearing before the court, and marked "Petitioners' Exhibit 3."

Mr. WILBUR: I object to the introduction of the ordinance on the ground, that it is incompetent, irrelevant, insufficient, and does not state the nature, character, locality, or description of the improvement. I object also to the ordinance because, as a part of the ordinance or attached to it, is a supposed estimate of the cost of the improvement, which is no part of the ordinance itself, and ask to have that portion of the ordinance excluded.

Mr. MECARTNEY: That was not offered, and hence it can be considered excluded.

The COURT: Mr. Wilbur says it is a part of the ordinance; is that a fact?

Mr. MECARTNEY: Not at all.

Mr. WILBUR: Let it be excluded by mutilation of the ordinance.

The COURT: He has not offered it.

Mr. WILBUR: I further object to the introduction of the ordinance

because it is not certified. The certificate goes to a large portion of the proceedings, and it is not confined to the ordinance offered.

Mr. MECARTNEY: The greater includes the less. The certificate includes all the proceedings of August 4th, and amongst them is the ordinance.

The COURT: Objection overruled.

Mr. WILBUR: Exception.

Mr. MECARTNEY: I offer the assessment roll in the case.

169 Mr. WILBUR: I object because it does not comply with the ordinance which has been offered in evidence; also because it is incompetent and insufficient.

The COURT: In what way do you claim it does not comply with the ordinance?

Mr. WILBUR: The assessment-roll provides for a certain improvement which is not provided for in the ordinance. There is nothing in this assessment-roll to show what the improvement is for.

Mr. MECARTNEY: Now I offer the original ordinance of March, 1893, of the town board, providing for this improvement; the same document as was offered on the preliminary hearing set forth on page 151 of the printed abstract in the West Park Commissioners *vs.* Farber in the supreme court in this case.

Mr. WILBUR: I object to the ordinance as incompetent and immaterial and because it is not properly certified.

Mr. MECARTNEY: We last week conceded this page set out the exact ordinance, and counsel made no objection before the court. Now, if he wants to make the same objection now, we will go and get it certified, but then I ask to introduce it later.

Mr. WILBUR: I will object to it and withdraw the objection as to the certification.

The COURT: Objection overruled.

Mr. WILBUR: Exception.

Mr. WILBUR: I want to move now that the court instruct the jury to find for the objectors in this case on the ground that the petitioners have not made out a *prima facie* case; that the proceedings at this point have not complied with the statute under which they are now being carried on. There is nothing before the court or the jury to show the cost of this improvement. No estimate is introduced in evidence here as the basis of the

170 ordinance. The estimate precedes the ordinance. The ordinance was the second ordinance introduced, and it does not contain or show the nature, locality, character, or description of the improvement; that part is entirely excluded from the ordinance offered in evidence. There are no specifications or plans before the court or jury to show what the improvement is for. The estimate is required by the statute, and it is not introduced in evidence at all. The statute under which we are proceeding makes the estimate and its certification a preliminary to the passage of the ordinance. The ordinance without the estimate is void. I ask that the jury be instructed to find for the objectors.

The COURT: I didn't hear any exception to the old ordinance.

Mr. WILBUR: The exception is made in the ordinance itself.

Mr. MECARTNEY: If there is any dispute about it I will turn back, but I will say that I stated I offered the original ordinance of March 28th as it was offered on the preliminary hearing before the court, and I stated that in the body of the ordinance, pages 153 or '4, I think it is, the specifications are set forth on other pages, and hence not necessary to repeat, and those other pages are a part of this offer.

The COURT: I don't think there is anything in the point. I will overrule it.

Mr. WILBUR: Exception.

171 GEORGE W. DORR, a witness called on behalf of the objectors, having been first duly sworn, was examined in chief by Mr. Wilbur, and testified as follows:

Q. What is your name?
A. George W. Dorr.
Q. What is your business?
A. Civil engineer.
Q. How long have you been a civil engineer?
A. About twenty years.
Q. How long have you resided in Chicago?
A. Twelve years.
Q. Have you held any official position in Chicago?
A. Yes, sir.
Q. What?
A. I was with the city of Chicago as chief engineer in the street department in 1892 and 1893, and engineer of the West Park commissioners from October, 1892 (?), to the spring of 1897.
Q. Are you familiar with Douglas boulevard?
A. Yes, sir.
Q. From Garfield to Douglas park?
A. Yes, sir.
Q. Did you take part in the construction of the boulevard?
A. Yes, sir.
Q. State generally what the boulevard is, giving dimensions and the elements that enter into its construction.
A. The boulevard proper is a strip of land running from Garfield park southward and, turning east, runs eastward to Douglas park. It is 250 feet in width. There are two driveways constructed on that portion of the boulevard. The driveways proper are 40 feet between curbs. The inner line of the curb is twenty feet from the park lawn and the other one is forty feet more, making sixty feet from the property line. There is a sidewalk space on either side eight feet in width. The sidewalk is paved with limestone, concrete, and granite on top. The curb and gutter is composed wholly of granite and cement, and the macadam improvement is composed of limestone rolled with granite finish. The asphalt improve-
172 ments are concrete base with asphalt top. That is substantially the improvement on Douglas boulevard.
Q. Whereabouts is the macadam improvement located?

A. The macadam drive is on the west side of the north and south boulevard and on the north side of the east and west boulevard.

Q. How many cubic feet of macadam driveway is there on the north and south portions of the boulevard?

A. How many cubic feet?

Q. Or yards.

A. I could not tell how many cubic yards in the improvement.

Q. What are the surface dimensions?

A. The lineal feet? I can tell you what the lineal feet of each improvement is.

Q. How much on the north and south boulevard?

A. If I had my memorandum; I could not tell you off-hand. I can figure it by a memorandum.

Mr. MECARTNEY: May I ask the purpose of this proof?

Mr. WILBUR: I want to get the amount of that kind of improvement.

The COURT: That is, the total cost?

Objected to.

The COURT: It is improper.

Mr. WILBUR: The macadam improvement.

Mr. MECARTNEY: If it is for that purpose, I object and ask a ruling.

The COURT: I will sustain the objection.

Q. Have you figured out, Mr. Dorr, the cost per front foot on the curb line of the macadam improvement?

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Have you figured out the cost of the asphalt improvement that appears in this boulevard on the main line?

Objected to.

Q. Make your estimate from the curb line of the curbs to
173 the centre lawn in the boulevard.

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. I will ask you whether or not the improvement as constructed at the juncture of the east and west and north and south boulevard is in accordance with the plans and specifications for its construction.

Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. I will ask you whether or not the north curb line of the lawn on the east and west boulevard is sixty feet from the lot line on the east end of the boulevard improvement.

Mr. MECARTNEY: I cannot make any sense out of that.

Q. I will ask you whether or not the north curb wall line in the east and west boulevard is parallel with the lot line of the lots facing south on the east and west boulevard.

A. Parallel lines?
Q. Yes.
A. No, sir.
Q. What is the variation?
A. Well, it varies, I think, along there. It does not run exactly parallel with the boulevard lines. I don't know exactly what the variation is.
Q. About what is the variation from the eastern extremity of the north curb wall line?
A. The north curb, you mean?
Q. Yes; the curb that forms the boundary of the centre lawn.
A. There is a variation there. I don't remember what it is. I couldn't tell you. It is three and a half or four feet, I should think, from being on a parallel line from the west end.
Q. What is the condition at the east end of the same wall?
A. That is what you asked me.
Q. The west end?
A. The west end is right.
Q. Then what is the effect of having the curb wall out of line?
A. There is no curb wall on that street.
174 Q. I mean the curb next to the lot, the combined curb and gutter.
A. What is the effect?
Q. Yes; what shape does it leave the driveway on that side?
A. The driveway has the same width all the way through.
Q. Where does the variation come; in the lots on the side, the lots outside of the centre lawn?
A. The lawn on the east end of the boulevard is a very little wider than it is at the west end on the east and west boulevard than on the north drive. The south drive is practically correct—parallel line all the way through.
Q. Did you have sole charge of the construction of this boulevard?
A. Yes, sir.
Q. Did all estimates of the cost of the boulevard made to contractors come through your hands?
A. Yes, sir.
Q. Do you know the cost of each of the elements of the boulevard?
A. Under the contract?
Q. Yes.
A. Yes.
Q. Do you know the cost of the macadam portion of this boulevard?

Objected to as incompetent and immaterial. Objection sustained.

Q. Are you familiar with the cost of macadam improvements in the city of Chicago, such as Douglas Boulevard improvement?
A. Yes, sir.
Q. Are you familiar with the cost of asphalt improvements, such as Douglas Park improvement?
A. Yes, sir.

Q. I will ask you whether or not in making that improvement the park board employed laborers to do any part of the work.

Objected to as incompetent and immaterial. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Do you know whether or not any of the improvement was made under contract?

175–177 Objected to. Objection sustained; to which ruling of the court counsel for objectors then and there duly excepted.

Q. Is the improvement at the intersection of the two branches of the boulevard made in accordance with the original ordinance.

The COURT: That has been asked and ruled on.
Mr. WILBUR: You sustain the objection to that?
The COURT: Yes.
Mr. WILBUR: Exception.

Q. Were any lamps used in the construction of this boulevard?
A. None to my knowledge.
Q. Were they provided for in the estimate?
A. Yes, sir.
Q. Were gas pipes provided for in the estimate?

Objected to.

A. I think there is no provision made for gas pipes. I don't remember any provision being made for gas pipes.

Cross-examination by Mr. MECARTNEY:

Q. The gas lamps, state whether or not the construction of the improvement is such that the gas lamps can still be erected.

Objected to.

A. Oh, yes.

The COURT: I will let it stand.

* * * * * * *

178 & 179 Mr. WILBUR: It is conceded by counsel for both sides in this case that the roadway of Douglas boulevard under consideration herein is park property, and under the sole control and jurisdiction of the board of West Chicago park commissioners; that it is held by them in trust for public purposes the same as the parks of the West Side system.
Mr. MECARTNEY: That is conceded.
Mr. WILBUR: It is further conceded that the improvement under consideration in this case is wholly within the park property.
Mr. MECARTNEY: Wholly within the park commissioners' property; that is conceded.

* * * * * * *

180 The COURT: Have you any further testimony?

Mr. WILBUR: No; I have no other testimony under the ruling of the court.

The foregoing was all the evidence introduced on the trial of said cause.

And thereupon the court gave to the jury, on behalf of the petitioners, the following instructions:

1. The jury are instructed that this is an application for the confirmation of an assessment made by the West Chicago park commissioners; that the objectors, claiming to be interested in some lot or lots of land assessed, have filed objections to the confirmation of the assessment against the premises in which they claim to be interested, and the only questions to be determined by the jury are whether the premises of the objectors or any of their said premises are assessed more or less than they have been specially benefited by the improvement, or more or less than their proportionate share of the cost of said improvement.

2. The jury are instructed that the report of the commissioners or the assessment-roll is *prima facie* evidence that the property objected for in this case had not been assessed more or less than it has been specially benefited by the proposed improvement, nor more or less than its proportionate share of the cost of said improvement.

3. The jury are instructed, as a matter of law, that the West Chicago park commissioners are the sole and only judges of the necessity for and of the mode, manner, and extent of the improvement referred to in the petition and the ordinance in this case, and the jury are not to consider any question of the necessity for nor of the propriety of such improvement.

181 4. The court instructs the jury that they cannot question whether or not the estimate of the total cost of the improvement, as set forth in the assessment-roll, is correct or not; that the said total estimate of cost in said roll is conclusive on the present hearing.

5. The jury are instructed that they have nothing to do with the extent of the territory included in the district assessed in this proceeding. They are to take it for granted that the district is right, and that all the property specially benefited has been assessed. On this subject the determination of the commissioners is conclusive in the present hearing.

6. The jury are instructed that if they believe from the evidence that the assessment as to the property of the objectors is just and correct, and that it has not been assessed more or less than it has been specially benefited by the improvement, or more or less than its proportionate share of the cost of the improvement, then, and in that case, your verdict may be in the following form:

"We, the jury, find the issues for the petitioner herein, and that the property of objectors is not assessed more or less than it has been specially benefited by the improvement, nor more or less than its proportionate share of the cost of said improvement."

And if the jury believe from the evidence that the premises of the objectors have not been specially benefited by the said improvement, the verdict in that case may be in the following form:

"We, the jury, find the issues for the objectors herein, and that the property of the objectors has not been specially benefited by the improvement."

And if the jury believe from the evidence that any of the property objected for has been specially benefited by the said improvement, but not to the extent that the same has been assessed, or that it has been assessed more than its proportionate share of the cost of the improvement, it thereupon becomes the duty of the jury to recast the assessment as to said premises and to find from the evidence the amount for which said premises ought to be assessed.

Your verdict must be written on a separate piece of paper.

To the giving of each and all of which instructions the objectors, by their counsel, then and there excepted.

182 And the objectors, by their counsel, then and there asked the court to give to the jury the following instructions, to wit:

1. The court instructs the jury to find the issues for the objectors.

2. The court instructs the jury that, subsequent to the passage of the ordinance under which the present proceedings are being carried on, it was necessary for the petitioners herein to make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the said assessment, and to enter a report thereof upon its records. If you do not find from the evidence that said petitioners did make such estimate and approve the same and enter a report thereof upon its records, then your verdict should be for the objectors.

3. The court instructs the jury that the ordinance herein provides for an estimate of the cost of said improvement to be made by the petitioners herein, as contemplated by the ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the said assessment, and enter a report thereof upon its records. If you do not find from the evidence that the petitioners herein made such estimate of the cost of the improvement, then your verdict should be for the objectors.

4. The jury are instructed that the only evidence offered by the petitioners herein is the ordinance under which the present proceedings are instituted and the assessment-roll, together with an ordinance which was the basis of a former proceeding relating to the cost of improvement. If you do not find from the evidence that the petitioners herein made an estimate of the cost of the improvement and entered a report thereof upon its records, then your verdict should be for the objectors.

5. The court further instructs the jury that before the petitioners herein were authorized to file the petition under which the present proceedings is being carried on, it was necessary for it to pass an ordinance and to record a report or estimate of the cost of the im-

provement, and it was also necessary for the petitioners to order the petition to be filed by its secretary or such other officer as they may direct. If you do not find from the evidence that the ordinance herein was duly passed, that a report of the estimate was entered upon the records of the petitioner, and that it directed its secretary or other officer to file the petition herein, then your verdict should be for the objectors.

But the court refused to give either or any of these instructions to the jury, and marked each and every of them refused; to which decision of the court in refusing to give the same and each of them to the jury, and to the marking each of said instructions "refused," the objectors, by their counsel, then and there excepted.

183 And thereupon the jury retired to consider of their verdict, and thereafter said jury returned to the clerk of said court its verdict against the said objectors; which verdict was received and read by the court in the presence of the jury and ordered to be entered of record; to which verdict and to the entry thereof the said objectors, by their counsel, then and there *accepted*; whereupon said objectors, by their counsel, then and there moved the court to set aside the said verdict so rendered and to grant a new trial in said cause.

And afterwards and on the 26th day of May, 1898, the matter of the disposition of said motion for a new trial was brought on for hearing by the court in open court, and leave was then and there given by the court to the said objectors, represented by George W. Wilbur, as their counsel, to file their written motion for a new trial, as of said last-named day, on or before the 28th day of May, 1898.

And the court then and there and on said 26th day of May, 1898, and prior to the filing of the written motion for a new trial and against the objection of the said objectors, by their counsel, denied and overruled the motion for a new trial so entered by said objectors, and gave judgment upon the said verdict; to the decision of the court denying such motion for a new trial the objectors, by their counsel, then and there duly excepted.

And afterwards and on, to wit, the 27th day of May, 1898, said objectors, by their counsel, duly filed their motion for a new trial in writing, as of said 26th day of May, 1898; which motion for a new trial is in words and figures as follows, to wit:

184 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for a Special Assessment for Cost of Completed Portion of Boulevard Improvement of Douglas Boulevard.

And now come the objectors herein, by George W. Wilbur, their attorney, and move the court to set aside the verdict rendered herein, and to grant a new trial in this cause.

For ground of their motion the objectors show to the court the following, to wit:

1. The court erred in not sustaining the legal objections filed herein on behalf of said objectors as to said assessment; and as to each and every of said objections they say that the court erred in not sustaining the same.

2. The court erred in not holding that said assessment was void.

3. The court erred in admitting incompetent, immaterial, and irrelevant evidence on the part of the petitioner-, against the objection of the objectors.

4. The court erred in not excluding from the jury evidence offered on the part of petitioner-, upon motion of the objectors.

5. The court erred in not granting the motion of the objectors to exclude the alleged ordinance offered in evidence herein on the part of petitioners, and which is the basis of the petition herein, and in not excluding said alleged ordinance.

6. The court erred in admitting in evidence herein the assessment-roll offered by petitioners, over the objection of the objectors, and the court erred in not excluding the same.

185 7. The court erred in admitting in evidence an alleged estimate of the cost of said improvement offered by petitioners, over the objection of the objectors, and in not excluding the same.

8. The court erred in admitting an alleged ordinance which purports to be the ordinance under which the said boulevard was constructed, on motion of the petitioner-, and in not excluding the same, on motion of the objectors.

9. The court erred in admitting in evidence other documentary evidence offered by petition-, over the objection of the objectors, and in not excluding the same.

10. The court erred in not dismissing the proceedings herein, on motion of the objectors, for the reason that the petitioners did not prove and produce in evidence a consenting petition, signed by a majority of the owners, requesting the making of said alleged improvement.

11. The court erred in not excluding the evidence offered by petitioners, and in not sustaining the motion *for* objectors to instruct the jury to return its verdict for the objectors.

12. The court erred in excluding competent, material, and relevant testimony offered on the part of the objectors.

13. The court erred in instructing the jury for the petitioner-.

14. The court erred in not instructing the jury to find for the objectors.

15. The court erred in admitting in evidence and in not excluding the said alleged assessment-roll.

16. The court erred in refusing instructions to the jury asked for by the objectors.

17. The verdict is not sustained by the evidence.

18. The verdict is contrary to the evidence.

19. The verdict is void.

20. The said verdict is informal and insufficient.

21. Said verdict is insufficient and void because it is
186 & 187 not based upon a legal and valid ordinance.

22. Said verdict is insufficient and void because it is not based upon a legal estimate duly approved by the petitioners herein, as is required by law, or upon any estimate in the manner and form required by law.

23. Said court erred in not sustaining the legal objections of objectors herein, because the petitioners herein never made and duly approved as estimate of the cost of the alleged improvement in the manner provided by law.

24. The court erred in not sustaining the objections of objectors herein, because said petitioners never made and duly approved any legal estimate of the cost of said improvement, in the manner required by law.

25. The court erred in admitting in evidence, over the objection of objectors, an alleged estimate of the cost of said improvement.

26. These objectors ask to have the verdict herein set aside on the further ground that they have since the said trial and the rendition of the said verdict discovered new and material evidence and evidence of such a nature that if it had been produced on the trial of the issues herein it would have resulted in the finding of a verdict for the objectors, and in a judgment herein in their favor. These objectors further say that such new evidence will be presented on the hearing of the motion herein in the form of affidavits, copies of which will be duly served upon the attorney for the petitioner herein within such time as the court may direct.

All of which is respectfully submitted.

GEORGE W. WILBUR,
Attorney for Objectors.

In support of which motion for a new trial said objectors, by their counsel, produced, filed, and read the affidavit of George W. Dorr, Lewis R. Dyer, and George W. Wilbur. To the affidavit of said Dorr were attached certain exhibits. Said affidavits and exhibits are as follows, to wit:

* * * * * * *

188 STATE OF ILLINOIS, }
County of Cook, } *ss.*:

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Affidavit of George W. Dorr on Motion for New Trial.

George W. Dorr, being first duly sworn on oath deposes and says that he is by profession and occupation a civil engineer; that he has followed this profession for upwards of twenty years; that during the year 1885 he came to the city of Chicago for the purpose of

continuing his profession, and that he has been so engaged from said last-named year until the date hereof; that during the month of October, 1893, he made arrangements with the board of West Chicago park commissioners to act as civil engineer, and that he continued in that employment from such time until on or about the 15th day of April, 1897.

This affiant further says that as a part of his duty as such civil engineer he was engaged in superintending the construction of what is known as Douglas boulevard, which is a boulevard under the control of the West Chicago park commissioners, and extends from Garfield park south and east into Douglas park.

This affiant attaches hereto as Exhibit A, and makes the same a part hereof, a part of the plans of said boulevard, extending from Garfield park south to the intersection of the boulevard extending to the east, and he attaches hereto as Exhibit B a plan of the portion of said boulevard extending from the intersection of Exhibit
189 A easterly to Douglas park. He also attaches hereto as Exhibit C a cross-section of said boulevard, which was made a part of the original plans for the said boulevard. This affiant also attaches hereto as Exhibit D a plat of that portion of said boulevard as constructed, as the same appears at the western extremity of the east and west boulevard and at the southern extremity of the north and south boulevard. Each of said three Exhibits A, B, and C are copies of the original plans for the construction of said boulevard.

This affiant further states that he was directed by said board of West Chicago park commissioners to take charge of the construction of said boulevard, and that he acted as chief engineer in such construction from the time of the commencement of the work until the final completion of such boulevard; that he had full charge of such work, and that he issued estimates from time to time for work done by the various contractors; that such estimates so made by affiant for such work were duly accepted and acted upon by said board of West Chicago park commissioners or its proper officers and payments or settlements were made with such contractors in accordance therewith.

This affiant further states that the various portions of said work were all done under contracts with different persons or corporations; that the board of West Chicago park commissioners employed no laborers about the construction of the portion of the boulevard specified in the ordinance herein, except in making changes in location of catch-basins and other matters outside of the contract work. This affiant verily believes that the total amount expended for such labor and for extra material did not exceed the sum of two thousand dollars. Affiant had two assistant engineers under him during a portion of the time said boulevard was being constructed.

190 This affiant further states that the original plans, together with the specifications and ordinance for the making of said boulevard, provided for a centre lawn 130 feet in width, extending the whole distance of said boulevard, with the exception of street crossings and intersections and with the exception of that part at

the western extremity of the east and west boulevard and the southern extremity of the north and south boulevard.

This affiant further states that said ordinance, plans, and specifications, under which said boulevard was constructed, provided for the improvement of sixty feet adjacent to the lot line on each side of said boulevard or of sixty feet on each side of said 130-foot lawn, with the exception of the portion at the junction of the two branches of said boulevard, as will more fully appear by the original plans and cross-section of said improvement, copies of which are attached hereto as Exhibits A, B, and C.

This affiant further states that said boulevard, as constructed, contains a centre lawn on the east and west portion thereof of 125 feet between the curbs of said centre lawn; that south of the south curb of said centre lawn is a roadway forty feet in width, lawns twelve feet in width, and cement sidewalk eight feet in width extending from Douglas park to a point four hundred feet east of the western extremity of said portion of said boulevard; that north of the north curb of said centre lawn on said east and west boulevard is a roadway forty feet in width, lawn seventeen feet in width, and cement sidewalk eight feet in width; that at the juncture of the north and south boulevard with the east and west branch thereof is a space four hundred feet square, which is improved as indicated by Exhibit D hereto attached; that the north and south boulevard, commencing at a point on the north line of said space four hundred feet square and extending thence north to Garfield park, is
191 improved as follows: The centre lawn between the curbs thereof is 120 feet in width; the roadway on the east side thereof is of asphalt forty feet in width, with side lawns twelve feet in width and cement sidewalk eight feet in width. On the west side of the centre lawn of said portion of the boulevard is a macadam roadway forty feet in width, side lawns twenty-two feet in width, and cement sidewalk eight feet in width.

This affiant further states that he is familiar with the ordinance and with the original estimate under which said boulevard was constructed; that he has read the petition filed by the town of West Chicago in this court in the original proceedings for the construction of said boulevard, said cause being known as No. 10655; that said petition contains a correct copy of the plans, ordinance, specifications, and estimate used in said original proceedings, as affiant verily believes; that said estimate herein referred to contains many items and specifications of articles which were not used in the construction of said boulevard, as will appear by comparing such estimate with the estimate in the present proceedings.

This affiant further states that he has also seen and is familiar with the estimate which is made a part of the petition herein and which purports to be an estimate of the cost of said boulevard improvement; that said estimate is dated August 4, 1896.

This affiant further states that he is familiar with the cost of said boulevard improvement in the proceedings herein, and in this affidavit set forth, in all of its essential details.

This affiant states that the five feet taken from the north side of

said centre lawn on the east and west boulevard made the portion of the said boulevard south of the lot lines thereof and north of said north curb line sixty-five feet in width; that the side lawns
192 on said portion of said boulevard were increased in width from twelve feet to seventeen feet; that the cost of constructing said side lawns of such increased five feet in width was made a part of the cost of said improvement, and the same is included in the estimate of the cost thereof, and it is a part of the present assessment.

This affiant further says that the side lawn at the south end of the west portion of the north and south boulevard is 22 feet in width, instead of 12 feet, as is provided for in the original plans, specifications, and ordinance; that the cost of improving said increased 10 feet of said side lawn was added to and made a part of the cost of the boulevard improvement involved in this assessment.

This affiant further states that the cost of improving the said centre lawn in the east and west portion of said boulevard was diminished in amount by the cost of improving said five feet which is added to the side lawn thereof, and that the cost of improving the centre lawn of the north and south portion of said boulevard was diminished by the amount required to improve said 10 feet added to said side lawn on the west side of said boulevard; that said last-mentioned side lawn diminishes in width from 22 feet at the southern extremity to about 19 feet at the northern termination of said boulevard.

This affiant further states that he is familiar with the cost of making boulevard improvements similar to the one under consideration herein; that he is also familiar with the amount that it costs to construct said extra width in lawns on the north side of said east and west boulevard and on the west side of said north and south boulevard. This affiant further states that he has carefully computed the cost of constructing said extra width of lawns, and finds the same to be substantially the sum of, to wit, $1,320.00.

This affiant further states that he is familiar with the drive-
193 ways crossing said centre lawns at or near street intersections, and he is also familiar with the cost thereof; that to construct said driveways across said centre lawns, such driveways being of macadam, was the sum of $5,323.81; that the cost of said driveways across said centre lawns was made a part of the cost of said improvement, and such cost is a part of the estimate herein and of this assessment.

This affiant further states that he is familiar with the cost of the macadam driveway on said boulevard which extends on the north side of said east and west boulevard and on the west side of said north and south boulevard; that at the time of the construction of said macadam roadway there was an old macadam road-bed which, as affiant believes, had been in place for a number of years; that its surface was not even, but it was firm and suitable for ordinary driving purposes; that the entire cost of making said macadam driveway, as required by the ordinance herein, was the sum of $30,966.00.

This affiant further states that said space 400 feet square, at the

intersection of said east and west and north and south branches of said boulevard, is improved in a manner different from what is required by the original ordinance and plans, as will appear by Exhibit "D," attached hereto; that the extra cost of macadam driveway therein is the sum of $1,966.00.

This affiant further states that there was a depression of about four feet covering a large portion of said 400-foot space; that said depression was subsequently filled, and a large part thereof is now a part of the centre lawn within said 400-foot space; that the cost of filling such depression was the sum of, to wit, $3,000.00, which amount is added to the cost of said boulevard improvement and is a part of this assessment.

This affiant further states that the asphalt driveway of said boulevard cost the sum of $107,213.71; that in its construction a
194 large amount of filling was required, the road-bed thereof being below the required grade, and it had never been used as a road or driveway.

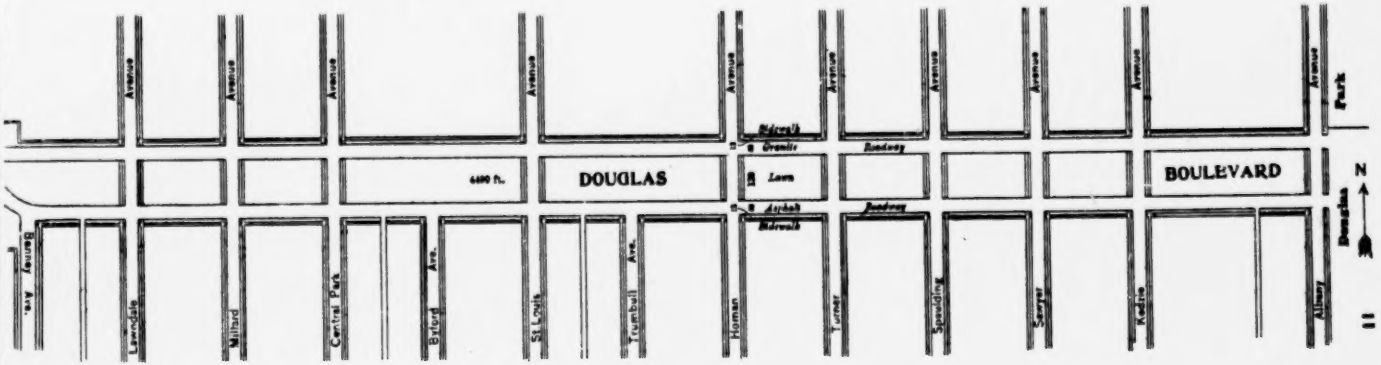
This affiant further says that the cost per front foot on the lot line of constructing the macadam driveway with lawns and cement walks, and including also cost of surveying, engineering, and inspecting, was the sum of, to wit, $7.47; that the cost of constructing the asphalt driveway per front foot on the lot line, including side lawns and cement walks, and including also cost of surveying, engineering, and inspecting, was the sum of, to wit, $19.37+.

This affiant further states that the item of the estimate herein for "manhole covers, sand, cement, brick, pipe, general labor, teaming, engineering, surveying, and inspection, $19,770.51," is excessive. This affiant states that the manhole covers, cement, sand, brick, pipe, general labor, and teaming relate to changes which were made in the location of certain catch-basins, such changes being necessary in order to avoid removing certain trees on the side lawns. This affiant further states, from the best of his knowledge, remembrance, and belief, that the entire cost of the labor and material mentioned in said item of the estimate, excluding therefrom the items of engineering, surveying, and inspection, did not exceed the sum of $2,000.00.

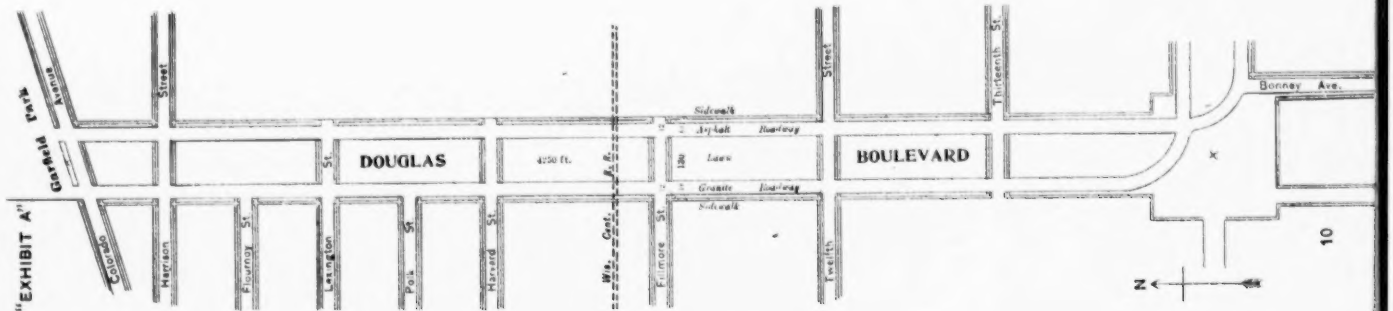
This affiant further states that he is familiar with the fair and reasonable cost of engineering, surveying, and inspecting said boulevard improvement, and that, according to his best knowledge, information, and belief, such engineering, surveying, and inspection should not have cost to exceed the sum of $6,000.00.

This affiant further states that he is familiar with the cost of what is known in the estimate herein as the combined curb and gutter, the estimated cost of which is $28,045.34. Affiant further states that the actual cost of such combined curb and gutter, as appears by the
contracts for the same, was $25,010.17. This affiant further
195 states that, as a part of said estimate, the cost of the combined curb and gutter along each side of the driveways crossing said center lawns is included and made a part thereof, and that such cost is also made a part of the assessment for improving the portion

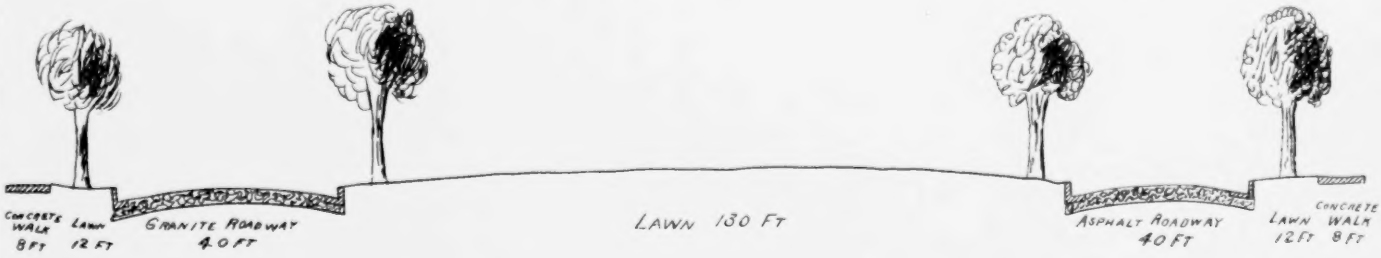
No. 201.
Farrell et al.
v.
West Chicago
Park Comrs.
} p 197



No. 201
Farrell et al.
v.
West Chicago
Park Com'rs
} p. 198



No. 201.
Farrell et al
v
West Chicago
Park Comrs
} p 199



CROSS SECTION OF DOUGLAS BOULEVARD

IMPROVEMENT

MECADAM
DRIVE
CENTER
LAWN
MECADAM
MECADAM
ASPHALT
BONS
ST.
125
40
ASPHALT
CENTER
MECADAM
LAWNDALE
(MECADAM)
AVE.
S
N
W
E
DRIVE
DRIVE
WOODLAND
LAWN
AVE.
40
125
40
CENTRAL PARK
(MECADAM)
AVE.

of said boulevard mentioned in the ordinance, plans, and specifications herein referred to.

This affiant further states that he is familiar with the cost of the cement sidewalks provided for in the ordinance, plans, and specifications for said improvement; that the actual cost thereof, as appears by the estimates issued by this affiant for work actually done by contractors, is the sum of $10,466.99, instead of the sum of $24,262.26, as appears by the estimate of the petitioners herein; that the cost of constructing the cement sidewalks across the center lawns of said boulevard is added to the cost of the improvement specified in said ordinance, plans, and specifications. This affiant states he is positive that the amounts given by him as the actual cost of said cement sidewalks are correct.

This affiant further states that from the best of his knowledge, information, and belief and from the estimates made by him at the time nearly four-fifths of the filling required for the construction of said side driveways was used upon said asphalt driveways.

This affiant further states that from his best knowledge, information, and belief in regard to the cost of said improvement provided for by said ordinance, plans, and specifications and upon the careful examination of his own estimates made at the time and from certain records and documents of the petitioners herein, the entire cost of said boulevard improvement so provided for in said original ordinance, plans, and specifications, exclusive of engineering, surveying, and inspection, did not exceed the sum of $195,239.21.

This affiant further states that he became acquainted with George W. Wilbur, the attorney for certain objectors herein,
196 on or about the 20th day of May, 1898; that on said last-named day he had a short conversation with said Wilbur in regard to the matter of said assessment, but not as to its details. This affiant states that the dimensions of said boulevard as constructed, together with the cost of the various parts thereof, as set forth in the foregoing affidavit, were communicated by this affiant to said Wilbur on the 27th, 28th, and 31st days of May, 1898; that in no prior conversations with said Wilbur did this affiant make known such items of cost of the various parts of said boulevard as herein set forth.

This affiant further states that he makes this affidavit freely and voluntarily and in the interests of justice.

GEO. W. DORR.

Subscribed and sworn to before me this 2nd day of June, 1898.
[SEAL.] R. McCONNELL,
Notary Public.

(Here follow diagrams marked pp. 197, 198, 199, and 200.)

201 STATE OF ILLINOIS, } ss.:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Petition of THE WEST CHICAGO PARK COMMISSIONERS for Cost of Completed Portion of Douglas Boulevard Improvement.

Lewis R. Dyer, being first duly sworn, on oath deposes and says that he is a civil engineer and surveyor and is familiar with street improvements and street constructions; that he has been a civil engineer and surveyor for upwards of thirty years in the city of Chicago and elsewhere.

This affiant further states that on the 31st day of May, 1898, he, in company with George W. Dorr, who makes an affidavit herein, inspected what is known as Douglas boulevard, extending from Douglas park in a westerly and northerly direction into Garfield park.

This affiant further states that he made careful measurements of the sidewalks, side lawns, roadways, center lawns, and a four-hundred-foot-square space at the juncture of the branches of said boulevard, for the purpose of ascertaining the extent of each thereof; that he found all of the cement sidewalks adjacent to the lot line to be of a uniform width of eight feet; that he found the side lawns on the north side of the east and west boulevard to be of a uniform width of seventeen feet between the sidewalk and the curb; that he found the macadam roadway on the north side of said east and west boulevard to be of a uniform width of forty feet; that he found the center lawn of said portion of said boulevard to be of a uniform width of 125 feet between the curbs thereof;
202 & 203 that he found the asphalt roadway to be of a uniform width of forty feet on the south side of said east and west boulevard, while the lawns were of a uniform width of twelve feet and the cement sidewalk of eight feet.

This affiant further states that he found the side lawns on the west side of the north and south boulevard to be 22 feet in width between the sidewalks and the curb at the southern extremity thereof and to be nineteen feet in width between the sidewalk and the curb at the northern extremity thereof; that he found the macadam roadway on the west side of said north and south boulevard to be of a uniform width of forty feet; that he found the center lawn on said north and south boulevard at the southern extremity to be one hundred and twenty feet in width, and at the northern extremity it is one hundred and twenty-two feet in width; that the asphalt roadway on the east side of said north and south boulevard is of a uniform width of forty feet, and the side lawns are of a uniform width of twelve feet.

This affiant further states that he has seen the affidavit of George W. Dorr herein, to which is attached, as "Exhibit D," a plat showing the surface lines of a portion of said boulevard four hundred feet square at the intersection of the north and south boulevard with

the east and west boulevard; that said plat is correct in all its details in regard to the construction of the boulevard represented on such map.

LEWIS R. DYER.

Subscribed and sworn to before me this 2nd day of June, 1898.

NEWTON A. PARTRIDGE,
[SEAL.] *Notary Public.*

* * * * * * *

204–214 And forasmuch as the matters above set forth do not fully appear of record, the objectors tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made and provided, which is done accordingly this 9th day of July, 1898.

WILLIAM T. HODSON, [SEAL.]
Acting Judge of the County Court of Cook County.

"O K."
H. S. MECARTNEY, *For Petn-.*
GEO. W. WILBUR,
For Objectors.

Foregoing bill of exceptions may be signed by any acting judge of Cook County county court.

H. S. MECARTNEY,
For Pet'n'r-.
GEO. W. WILBUR,
Att'y for Objector-.

* * * * * * *

215 STATE OF ILLINOIS, }
County of Cook, } *ss*:

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true, correct, and complete transcript of the record in the matter of the assessment by the West Chicago park commissioners for the completed portion of boulevard improvement on Douglas boulevard from Garfield park to Douglas park against the property described in the objections filed therein by George W. Wilbur (except the bill of exceptions, the original bill of exceptions being by stipulation incorporated herein and made part of this transcript of record)—gen. No., 15232; all of which appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 13th day of Sept., A. D. 1898.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

216 In the Supreme Court of Illinois, of the October Term, 1898.

THOMAS F. FARRELL ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees.	Appeal from County Court, Cook County.

Assignment of Errors.

And now come the appellants, by George W. Wilbur, their attorney, and say that in the said record and proceedings and in the said judgment there is manifest error in this, to wit:

1. The court erred in not sustaining the legal objections filed herein on behalf of said objectors as to said assessment, and as to each and every of said objections they say that the court erred in not sustaining the same.

2. The court erred in not holding that said assessment was void.

3. The court erred in admitting incompetent, immaterial, and irrelevant evidence on the part of the petitioner against the objection of the objectors.

4. The court erred in not excluding from the jury evidence offered on the part of the petitioner, upon motion of objectors.

5. The court erred in not granting the motion of the objectors to exclude the alleged ordinance offered in evidence herein on the part of the petitioners, and which is the basis of the petition herein, and in not excluding said alleged ordinance.

6. The court erred in admitting in evidence herein the assessment-roll offered by petitioners, over the objection of the objectors, and the court erred in not excluding the same.

217 7. The court erred in admitting an alleged ordinance, which purports to be the ordinance under which the said boulevard was constructed, on motion of the petitioners, and in not excluding the same on motion of the objectors.

8. The court erred in not dismissing the proceedings herein on the motion of the objectors for the reason that the petitioners did not prove and produce in evidence a consenting petition, signed by a majority of the owners, requesting the making of said alleged improvement.

9. The court erred in not excluding the evidence offered by petitioners and in not sustaining the motion of objectors to instruct the jury to return a verdict for the objectors.

10. The court erred in excluding competent, material, and relevant testimony offered on the part of the objectors.

11. The court erred in instructing the jury for the petitioners.

12. The court erred in not instructing the jury to find for the objectors.

13. The court erred in admitting in evidence and in not excluding the said alleged assessment-roll.

14. The court erred in refusing instruction to the jury asked for by the objectors.

15. The verdict is not sustained by the evidence.
16. The verdict is contrary to the evidence.
17. The verdict is void.
18. Said verdict is insufficient and void because it is not based upon a legal and valid ordinance.
19. Said verdict is insufficient and void because it is not based upon a legal estimate, duly approved by the petitioners herein, as is required by law, or upon any estimate in the manner and form required by law.

218–221 Wherefore, and for divers other errors appearing in the said record, proceedings, and judgment, the appellants pray that the said judgment may be reversed, etc.

GEO. W. WILBUR,
Attorney for Appellants.

222 & 223 And afterwards, to wit, on the nineteenth day of October, A. D. 1898, certain proceedings were had in said court and orders made and entered of record, among which is found the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 498. Appeal from County Court, Cook.

Now, on this day, come the parties hereto; and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant- hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee- having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court—

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

224 And afterwards, to wit, on the twenty-second day of October, A. D. 1898, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 498. Appeal from County Court, Cook.

And now, on this day, the court having considered the motion of appellee, to dismiss the appeal herein, and being advised in the premises, it is considered by the court that said motion to dismiss the appeal herein be, and the same hereby is, reserved to final hearing of this cause.

225 At a supreme court begun and held at Springfield, on Tuesday, the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-first day of December, A. D. 1898, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THOMAS F. FARRELL ET AL. *v.* WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error: therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the county court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the county court of Cook county for such other and further proceedings as to law and justice shall appertain.

And it is further considered by the court that the said appellants recover of and from the said appellees their costs by them in this behalf expended, and that they have execution therefor.

226 At a supreme court begun and held at Springfield on Tuesday, the seventh day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the ninth day of February, A. D. 1899, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 14 R. H. Appeal from County Court, Cook.

Now, on this day, this cause coming on to be heard upon the petition for rehearing of the appellee- for a rehearing herein, and the court being now duly advised in the premises:

It is considered and ordered by the court that said petition for rehearing herein be allowed.

227 And afterwards, to wit, on the 22nd day of February, A. D. 1899, certain proceedings were had in said court and orders made and entered of record, among which is the following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } 14 R. H. Appeal from County Court, Cook.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that a rehearing has been granted herein on petition of appellee-, and appellant- having entered motion to reverse the judgment and remand said cause and for costs, and the said appellee- having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

228 At a supreme court begun and held at Springfield, on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the thirteenth day of October, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

229 THOMAS F. FARRELL * * *
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the

record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error; there-
230 fore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the court that the said ap-lees recover of and from the said appellants their costs by them in this behalf expended, and that they have execution therefor.

231 At a supreme court begun and held at Springfield, on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the thirteenth day of October, 1899, the opinion of the court was filed in the words and figures following, to wit:

T. F. FARRELL ET AL. *vs.* WEST CHICAGO PARK COMMISSIONERS. } No. R. H. 14. Error to —. Appeal from County Court, Cook.

232 Docket No. R. H. 41—Agenda 77—Northern Div.—Feb., '99.

THOMAS F. FARRELL ET AL. *v.* WEST CHICAGO PARK COM'RS.

Mr. Justice BOGGS delivered the opinion of the court:

In Culver *v.* People *ex rel.*, 161 Ill., 89, the ordinance of the corporate authorities of the town of West Chicago providing for the improvement of Douglas boulevard, adopted March 28, 1893, at the request of the West Chicago park commissioners, was declared to be void. The improvement contemplated by said void ordinance having been completed by the commissioners thereunder, said commissioners, on the fourteenth day of July, 1896, in pursuance of the provisions of section 20 of the act in force July 1, 1895, entitled "An act to enable park authorities to make local improvements," etc., adopted an ordinance providing that the cost of making the said improvement should be paid for by special assessments upon the property benefited thereby. This is an appeal from a judgment

of the county court confirming a special assessment under the said ordinance upon certain property of the appellants.

The appellants, who are very numerous, appeared and complied with all the rules of this court, and the cause being ready for decision on their part, it was submitted and taken by the court for determination, after which a motion was made by appellees to dismiss the appeal as to all of the appellants except Michael Kelter, on account of the insufficiency of the appeal bond. Upon the rendition of the judgment in the county court an appeal was allowed to the appellants, severally, on filing a bond in the sum of $250, with surety to be approved by the clerk of the circuit court. A bond was given by Michael Kelter alone, as principal, and Judson D Sherman as surety. It purports to be in behalf of all the other appellants as well as Kelter, and the condition is for the prosecution of the appeal by each of the appellants, and it was approved in accordance with the order allowing the appeal. The bond was insufficient, and if objection had been made in apt time a rule would have been entered requiring a good bond, but the appeal could not have been dismissed without an opportunity to file such bond. Section 69 of the practice act forbids the dismissal of an appeal by reason of any informality or insufficiency of the appeal bond, if the party
233 taking the appeal shall, within a reasonable time to be fixed by the court, file a good and sufficient bond to be approved by the court. When the motion was made the appellants had submitted their controversy to the court, and it could not be entertained without setting aside the order by which the case was taken. There was no motion to set aside that order, and the motion to dismiss must be denied.

The contention of appellants that no proof was made as to the cost of the entire improvement is not tenable. We find the assessment-roll was introduced in evidence and that the total cost of the improvement was therein clearly shown. This disposes of a number of alleged errors based upon this contention.

The judgment here appealed from is the same one which was before this court in Cummings *v.* West Chicago Park Com'rs (*ante*, p. —). Appellants' assignment as for error that it was not proven the owners of a majority of the land fronting on the proposed improvement had petitioned or consented that the improvement should be made is the same as was presented by the appellants in the Cummings case. The alleged error was found groundless in that case, and upon the authority of that holding the same ruling is made in this. The discussion of and reasoning upon the point need not be repeated.

The court properly declined to receive oral testimony as to the contents of the petition of the consenting property-holders for the reason the petition itself was the better evidence and its absence was not accounted for.

The validity of the assessment generally is questioned because the original ordinance limited the assessment to contiguous property, while the new ordinance provides for an assessment upon all property benefited. If that objection would be available it would

only be to an owner whose property was not included in the terms of the original ordinance, and counsel has not made it appear that any of the appellants' property is so situated. If the property of appellants is contiguous to the improvement they could not be prejudiced by a new assessment-roll covering a larger district, by which other property-owners are made to contribute to the expense.

The opinion and judgment of this court in the Culver case, declaring the original ordinance to be void, were rendered and entered in this court on the twenty-eighth day of March, 1896.

234 The appellee commissioners accepted such decision and judgment as final, and on the fourteenth day of July, 1896, in an ordinance adopted on that day, (being the ordinance here involved), declared the provisions of the said original ordinance had failed by reason of such decision of this court, and ordained that a new special assessment on property benefited should be levied and assessed under the provisions of said section 20 of the said act in force July 1, 1895, which provides for such proceedings in the event a prior ordinance has been declared void. Previous to the passage of such last-mentioned ordinance this court, in certain writs of error prosecuted by the appellant Farrell and others to obtain a reversal of the judgment of confirmation against them under the prior void ordinance, declared (Farrell *v.* Town of West Chicago, 162 Ill., 280) such prior ordinance void on the authority of the Culver case. After the ordinance of the appellee commissioners here involved had been adopted, and while proceedings were pending in the county court for confirmation of assessments under it, the plaintiffs in error in the Farrell case caused the original proceeding under the void ordinance, which had been removed from the docket of the county court, to be reinstated in that court for the purpose of filing the remanding orders of this court in the Farrell case. It is now objected that the new ordinance to levy the assessment here under consideration is invalid for the reason it was adopted before the proceedings under the prior ordinance had been concluded, and that for the same alleged reason this proceeding under said last ordinance is premature and cannot be maintained. The point is not well taken. Prior to the adoption of this last ordinance this court had declared the prior ordinance to be void, and the proceedings thereunder in the county court had been, in some way not fully disclosed in the record, stricken from the docket of the county court. Such action was proper to have been taken as a consequence of the decision in the Culver case, and it is to be presumed the proceeding was so disposed of by the county court. The appellee commissioners properly accepted the decision in the Culver case and the striking of the proceeding from the docket of the county court as final, and were fully warranted in taking steps, under the statute, to recover the cost of making the improvement from the property which had been benefited thereby. This

235 latter ordinance and the proceedings thereunder were in no way violative of the orders of this court that the writ of error in the Farrell case should operate as a supersedeas. On the contrary, the action of the commissioners in abandoning the old ordinance and the proceedings thereunder was in obedience to the super-

sedeas orders of this court that they should not proceed further under the prior ordinance.

The trial court properly excluded testimony tendered by appellants for the purpose of showing the cost of that portion of the improvement upon which the property of appellants, or some of them, abutted. The proportionate share of the cost of the improvement to be paid by the different pieces of property is the proportionate share of the cost of the improvement as a whole. The cost of that portion of the improvement which adjoins the property to be assessed has no tendency to show the proportionate part of the cost of the whole improvement to be borne by such property. Other objections of the appellants, equally untenable, were presented by the appellants in the Cummings case, (*ante*, p. —,) and are discussed in the opinion in that case.

The grounds of the objections to the action of the court in passing upon instructions to be given the jury are disposed of by what has been said hereinbefore in the discussion of other alleged errors.

The affidavits as to newly discovered evidence, filed in support of a motion presented by appellants to set aside the order overruling their motion for a new trial, were insufficient to entitle the appellants to a favorable decision on the motion. The testimony relied on as newly discovered, so far as it is in any way important, was contained in the ordinance, plans, specifications, and estimates, which were, of course, open to the inspection of appellants—indeed, compose a part of the record in the cause—and could have been known at the time of the trial by the exercise of the requisite diligence. The alleged changes in the manner of the construction of the improvement, referred to in said affidavits, so far as at all material, were such, only, as were apparent to observation, and by the exercise of even slight diligence would have come to the knowledge of every one interested, as were the appellants, in considering whether the improvement had been completed as contemplated by the ordinance. Dyk *v.* De Young, 133 Ill., 82; Plumb *v.* Campbell, 129 *id.*, 101.

The judgment is affirmed.

Judgment affirmed.

236 STATE OF ILLINOIS, } ss.:
Supreme Court, }

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, February 3rd, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of the Supreme Court.

237 And afterwards, to wit, on the 18th day of November, A. D. 1899, a certain order staying proceedings was filed in the office of the clerk of said court in the words and figures following, viz:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

Having read and considered the petition for rehearing in this cause, and being of the opinion that there is probable ground for granting a rehearing, it is ordered that all further proceedings herein be stayed until the next term of this court.

Oregon, Illinois, November 22, 1899.

JAMES H. CARTWRIGHT,
Chief Justice.

238 At a supreme court begun and held at Ottawa, on Tuesday, the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the northern grand division of the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Wood, sheriff.

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the eleventh day of December, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THOMAS F. FARRELL ET AL.
vs.
WEST CHICAGO PARK COMMISSIONERS. } No. 498. Appeal from County Court, Cook.

Petition for Rehearing.

Now, on this day, this cause coming on to be heard upon the petition of the appellants for a rehearing herein, and, the court being now duly advised in the premises, it is considered and ordered by the court that said petition for a rehearing be overruled and denied, and it is further ordered by the court that the order staying proceedings, heretofore entered herein, be now set aside and held for naught; and it is further considered by the court that said petitioner pay the costs and charges herein taxed.

239 And afterwards to wit, on the 23rd day of January, A. D. 1900, there *was* filed in the office of the clerk of said court a certain petition for writ of error from the United States Supreme Court, an affidavit of George W. Wilbur, order allowing a writ of error from the United States Supreme Court, and bond; which said petition, affidavit, order, and bond are in the words and figures following, viz:

240 In the Supreme Court of Illinois, of the December Term, 1899.

THOMAS F. FARRELL ET AL., Appellants, vs. WEST CHICAGO PARK COMMISSIONERS, Appellees.	Appeal from County Court, Cook County.

Petition for Citation.

To the Honorable James H. Cartwright, chief justice of the supreme court of Illinois:

Now come Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sarah E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner,
241 Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, and Michael Hannigan, by George W. Wilbur, their attorney, and show to the chief justice of the supreme court of the State of Illinois that in the record and also in the rendition of the judgment in the above-entitled cause, lately pending in the supreme court of the State of Illinois, between Thomas F. Farrell *et al.*, appellants, and The West Chicago Park Commissioners, appellees, and in which final judgment was rendered against said Thomas F. Farrell *et al.*, appellants, on the seventh day of December, 1899, it appears in the record now remaining in the supreme court of Illinois that certain rights and privileges were claimed under the Constitution of the United States by said Thomas F. Farrell *et al.*, appellants, and that said supreme court of the State of Illinois erroneously decided against said rights and privileges of said Thomas F. Farrell *et al.*, appellants, which were specially set

up and claimed under said Constitution; and, further, that the validity of the authority exercised by said State of Illinois, was drawn in question in said suit by said Thomas F. Farrell *et al.*, appellants, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said supreme court of Illinois was in favor of the validity of said authority so exercised; from all of which said Thomas F. Farrell *et al.*, appellants, allege that it appears in the said record and proceedings in said suit manifest error has occurred, to the great damage of said Thomas F. Farrell *et al.*, appellants.

Wherefore said Thomas F. Farrel *et al.* respectfully asks that there be granted unto them, under and pursuant to the acts
242 of Congress in such case made and provided, a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois; that the said record and proceedings may be reviewed and the said error therein may be corrected and speedy justice done in the premises; that said writ of error may be made a supersedeas; that a citation may be issued herein, pursuant to law, citing and admonishing the said West Chicago Park Commissioners to be and appear at the Supreme Court of the United States, at Washington, according to the usual course and practice in such cases; that the supersedeas bond herewith presented to the court may be duly approved, and that such other and further orders and proceedings may be had and entered herein as may be necessary fully to grant to said Thomas F. Farrell *et al.* the relief herein prayed for, according to the usual course and practice in such cases.

And your petitioners will ever pray, etc.

THOMAS F. FARRELL,
J. F. REILLY,
C. E. GREENFIELD,
JOHN T. MILNAMOW,
J. H. LONDRIGAN,
JAMES J. CASEY,
MERCY HOSPITAL AND
MERCY ORPHAN ASYLUM,
DAVID HENNEBERRY,
MARGARET McDONNELL,
MARGARET CASEY,
J. McCALMONT,
SARA E. OBERLANDER,
EDWARD J. McCARTHY,
EMILY STENBERG,
LINA D. THOMPSON,
MARY E. BAILEY,
ELLIS ROBERTS,
SARAH J. LYNCH,
CELIA A. NEIL,
THOMAS A. DAVIS,
FRANK I. CRANE,
C. D. GAMMON,
JOHN B. SCULLY,
M. H. REILLY,
J. H. BREWSTER,
L. C. STEBBINS,
J. J. CARROLL,
THOMAS P. CASEY,
E. D. RAYNOR,
ELIZABETH TWOMEY,
EDWARD L. CASEY,
JOHN VAUGHN,
E. J. McLAUGHLIN,
A. C. BLETTNER,
LOTTIE SIMON,
GEORGE H. BLETTNER,
JAMES L. MONAGHAN,
JAMES CONNOR,
PETER W. REED,
A. R. MARTIN,
D. B. WAITE,
MARY LA LANDE,
FRANK J. NOVAK,
ELIZA HENNICK,
CHARLES G. M. MEYER,

A. E. GAMMON,
JOHN B. KELTER,
ROSE BERWIN,
JOHN P. COAN,
WILLIAM SCOTT,
F. W. E. HENKEL,
JAMES C. DOOLEY,
A. M. MAYPOLE,
M. KELTER,
WILLIAM L. HOERBER,
HENRY MATTHES,
JOHN A. MULLEN,
CARL STRUEH,
JOHN C. KIESSLING,
ELIZABETH B. KELLER,
G. A. PUDEWA,

243–247

HERMAN PAESLER,
EUGENE O'SULLIVAN,
J. G. SHERMAN,
ADELAIDE G. WALTER,
MINA SLAVIK,
JAMES CRIGHTON,
THOMAS D. WAYNE,
LUKE P. COLLERAN,
WILLIAM L. BRENT,
JOHN A. WILSON,
J. W. MIDGLEY,
CHARLES J. BYRNE,
GEORGE W. MILES,
FRANK ZAJICEK,
JOSEPH E. BIDWELL,
F. W. DORN,
W. A. WALTER,
WILLIAM HAASE,
EMMA A. DOYLE,
S. A. SCRIBNER,
MARY O'NEILL,
C. S. STOVER,
J. S. LYONS,
D. H. CUNNINGHAM,
J. L. HOERBER, JR.,
H. S. JOSSELYN,
M. A. MAHONEY,
EDWARD J. DWYER,
MICHAEL HANNIGAN,

By GEO. W. WILBUR,
Their Counsel.

248 In the Supreme Court of Illinois, of the December Term, 1899.

THOMAS F. FARRELL ET AL., Appellants, *vs.* WEST CHICAGO PARK COMMISSIONERS, Appellees. } Appeal from County Court, Cook County.

Order.

Upon motion of George W. Wilbur, attorney for appellants, and upon filing a petition for writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00).

And upon further motion of said George W. Wilbur, attorney for said appellants, supported by his affidavit, it is also ordered that said writ of error be allowed to the various parties named in said affidavit as therein set forth—that is to say:

That the name of M. H. Reilly be substituted for the name of W. F. Reilly; that the name of W. H. Londrigan be substituted for the name of V. V. Vincent; that the name of Margaret McDonnell

be substituted for the name of Margaret McDonald; that the name of David Henneberry be substituted as the owner of lots 11 and 12 in Edward Casey's addition to Chicago, which lots are objected for respectively in the names of E. D. Raynor and Elizabeth Twomey; that the name of Elizabeth Twomey be substituted as the owner of lot 14 in said Edward Casey's addition to Chicago, which lot is objected for in the name of Theresa Casey; that the name of Margaret McDonnell be substituted as the owner of lots 17 and 18 in said Edward Casey's
249 addition to Chicago, which lots are objected for in the name of Margaret McDonald; that the name of John Vaughn be substituted as the owner of lots 41 and 42 in said Edward Casey's addition to Chicago, which lots are objected for in the name of Margaret Casey; that the name of Thomas P. Casey be substituted as one of the joint owners of the real estate objected for in the name of James J. Casey *et al.*; that the name of Edward J. McCarthy be substituted for the name of Laura A. Carqueville; that the name of James L. Monaghan be substituted for the name of William Martin; that the name of William L. Brent be substituted for the names of Bell F. Jacobson and James Grennon, respectively; that the name of C. D. Gammon be substituted as the owner of lots 25 and 26, block 5; that the name of Eliza Hennick be substituted as the owner of lots 27 and 28, block 5, and that the name of A. E. Gammon be substituted as the owner of lots 29 and 30, block 5, all in D. S. Goodwin's subdivision, which several lots are objected for in the name of Lucy F. Foote *et al.*; that the name of Rose Berwin be substituted for the name of C. F. Camp; that the name of John A. Mullen be substituted as the owner of the west ½ of lot 23 and all of lot 24, block 3, objected for in the name of R. Melms; that the name of Mina Slavik be substituted for the name of Frank Slavik; that the name of Luke P. Colleran be substituted for the name of Norman Carroll; that the name of J. S. Lyons be substituted for the name of J. W. Lyons; that the name of John A. Wilson be substituted for the name of James Cunningham, and that the name of W. A. Mahoney be substituted for the name of Patrick Moore.

It is further ordered that the above-named parties be substituted as above set forth in a petition for writ of error from the Supreme Court of the United States, and that said substitution be made in all writs and documents hereafter issued in said matter in this court in the same manner as though said names had
250 appeared as herein set forth in the original objections in said cause in said county court.

It is further ordered that the said affidavit of said George W. Wilbur be, and the same is hereby, made a part of the petition herein praying for the issuance of said writ of error.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

Oregon, Illinois, January 20, 1900.

251 Know all men by these presents that we, Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sarah E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neil, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. M. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Struch, James C. Dooley, John C. Kiessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. H. Cunningham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dwyer, Joseph E. Bidwell, as principals, and Joseph O'Donohue, as surety, are held and firmly bound unto the West Chicago Park Commissioners in the sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Witness our hands and seals this 11th day of December, A. D. 1899.

The condition of the above obligation is such that whereas, on the 13th day of October, A. D. 1899, a judgment of affirmance
252–258 was rendered by the supreme court of the State of Illinois, being in the October term, 1899, of said court, in a certain cause therein pending, entitled "Thomas F. Farrell *et al. vs.* The West Chicago Park Commissioners," in which said proceedings said principal obligors were appellants from a judgment rendered by the county court of Cook county, Illinois, in the nature of an order confirming a special assessment levied by said appellees upon lots and lands of said appellants, in and by which said judgments of said county court and of said supreme court said principal obligors claim that rights asserted by them under the Constitution of the United States were denied them: that after the rendition of the said judgment of affirmance in said supreme court, and on, to wit, the 7th day of November, 1899, said principal obligors filed in said supreme court their certain petition for a rehearing of said cause, and that afterwards and on, to wit, the 7th day of December, 1899, and of the December term, 1899, said supreme court denied said petition of rehearing of said cause and thereby sustained said judgment of

affirmance so entered on said 13th day of October, 1899, as to the principal obligors herein; and

Whereas said principal obligors have sued out a writ of error from the Supreme Court of the United States to review said judgment of affirmance, and have prayed that the same be made a supersedeas:

Now, if the said principal obligors above named shall prosecute their said writ of error with effect, and if they fail to make their plea good shall answer all damages and costs, then this obligation to be void: otherwise to remain in full force and effect.

* * * * * * *

259 First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error and each of them.

Second. The county court of Cook county should have dismissed the petition for confirmation of said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support said assessment, and also on the further ground that, in view of the evidence before the court, the same appeared to be insufficient in law, and said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county court of Cook county had jurisdiction to confirm the assessment appealed from as to the property of the plaintiffs in error and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by an ordinance and proceedings originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceedings to confirm an assessment therefor, erred in hold-
260 ing that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after the completion of the work.

Sixth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Seventh. The county court erred in not granting the motion of plaintiffs in error for a new trial of said cause on the ground of newly discovered evidence, and said supreme court erred in sustaining said county court therein.

Eighth. Said county court erred in not dismissing said proceedings on motion of plaintiffs in error because said proceedings were being carried on and were instituted under a statute passed subsequently to the completion of said improvement, and said supreme court erred in sustaining said county court in refusing to grant said motion.

Ninth. Said county court erred in not sustaining the motion of plaintiffs in error to dismiss said proceedings because said defendants in error did not produce and prove that they had a consenting petition for the making of said improvement signed by a majority

of the owners of real estate fronting thereon, as required by law, and said supreme court erred in sustaining said county court therein.

Tenth. Said county court erred in not granting the motion of plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said county court on behalf of said plaintiffs in error, and said supreme court erred in sustaining said county court.

Eleventh. Said supreme court erred in overruling the assignments of error of plaintiffs in error and each thereof, and in not sustaining the same.

261 Twelfth. That by the said record it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said above-named plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said above-named plaintiffs in error and against the said West Chicago Park Commissioners, and the said above-named plaintiffs in error pray the judgment aforesaid may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

NEWTON A. PARTRIDGE, *Of Counsel.*

262 In the Supreme Court of the United States.

THOMAS F. FARRELL ET AL., Plaintiffs in Error, *vs.* THE WEST CHICAGO PARK COMMISSIONERS, Defendants in Error.	Error to Supreme Court of State of Illinois.

Statement of the parts of the record and the assignment of errors upon which the plaintiffs in error intend to rely and which they think necessary for the consideration of the court in determining the issues in said cause.

The plaintiffs in error designate the following portions of said record to be printed by the clerk in accordance with the rule of this court:

1. Writ of error from the Supreme Court of the United States and certificate thereto.

2. Citation from the supreme court of the State of Illinois, together with the return of the sheriff of Cook county, Illinois, and the certificate thereto.

3. Certificate of clerk of supreme court of Illinois as to transcripts of record.

4. Transcript of record from page 1 to page 9, inclusive.

5. Preamble to assessment-roll on page 10 and caption thereto on page 11 (omit descriptions on pages 12 to 24, inclusive). Include

that part of page 24 following the line containing the name "J. L. Messweir."

6. Certificate of commissioners to assessment-roll, appearing on pages 25 and 26.

263 7. Objections to assessment, appearing on pages 28 to 36, inclusive. Omit, however, the following objections: 1st, 2nd, 4th, 5th, 6th, 7th, 10th, 13th, 15th, 18th, 20th, 21st, 23rd, and 25th. Omit, also, schedules of land "A" and "B," on pages 36 to 44, inclusive.

8. Order to file objections, entered September 16, 1896, page 45.

9. Objections by George W. Wilbur, appearing on page 46.

Omit schedule of lands on pages 47 and 48.

Omit, also, the following objections:

1, 2, 4, 7, 8, 10, 12, 15, 17, 19, and 21.

10. Order of September 26, 1896, appearing on pages 59 and 60, omitting descriptions, which appear on pages 60 to 64, inclusive.

11. Order of April 27, 1897, appearing on page 67.

12. Order of May 7, 1897, appearing on page 68.

13. Order of May 8th, 1897, appearing on page 69.

14. Order of April 6, 1898, appearing on page 71.

15. Orders of May 18, 1898, appearing on page 72.

16. Amended and additional objections by George W. Wilbur, appearing on pages 73 to 80, inclusive. Omit, however, objections numbered 8, 9, 20, 24, 25, 26, 29, 32, and 33.

17. Order of May 18, 1898, appearing on page 81.

18. Order of May 24, 1898, appearing on page 82.

19. Order of May 25, 1898, appearing on page 83.

20. Order of May 26, 1898, appearing on page 84.

21. Order of May 26, 1898, appearing on page 85 and the following page.

22. Order of May 28, 1898, appearing on page 86.

23. Order of June 4, 1898, appearing on page 87.

24. Bill of exceptions, appearing on pages 92 to 104, inclusive.

25. "Exhibit C," on page 119, and up to and including page

264 137. Omit pages 138 to 159, inclusive, and page 160 down to and including the following:

"Mr. BREEDEN: I am representing the Chicago and Northern Pacific in this trial before the court."

26. The remainder of page 160, commencing as follows:

"Mr. WILBUR: I have nothing further to offer," etc.,

down to and including the following on page 163:

"Mr. MECARTNEY: That is right."

27. Page 165 down to and including the following on page 175:

"The COURT: I will let it stand."

28. Page 178 down to and including the following:

"Mr. MECARTNEY: Wholly within the park commissioners' property; that is conceded."

Omit the remainder of page 178 and pages 179 and 180 down to and including the following:

"(Said documents appear at length in the exhibits which were offered on the hearing of the legal objections, and for that reason it is not necessary that they be repeated here.)"

29. Page 180 from and including the following:

"The COURT: Have you any further testimony?"

down to and including page 186.

30. Page 188 down to and including page 200.

31. Affidavit of Lewis R. Dyer, appearing on pages 201 and 202, inclusive.

32. Certificate of trial judge to record, appearing on page 204.

33. Certificate of clerk of county court of Cook county, appearing on page 215.

34. Assignment of errors, appearing on pages 216 to 218, inclusive.

35. Order of October 19, 1898, appearing on page 222.

265 36. Order of October 22, 1898, appearing on page 224.

37. Order of December 21, 1898, appearing on page 225.

38. Order of February 9, 1899, appearing on page 226.

39. Order of February 22, 1899, appearing on page 227.

40. Order of October 30, 1899, appearing on pages 228 to 230, inclusive, omitting, however, the names of plaintiffs in error, except the first.

41. Opinion of October 30, 1899, appearing on pages 231 to 236, inclusive.

42. Order of November 22, 1899, appearing on page 237.

43. Order of December 11, 1899, appearing on pages 238 and 239, inclusive.

44. Petition for citation, appearing on pages 240 to 243, inclusive.

45. Order, appearing on pages 248 to 250, inclusive.

46. Appeal bond, appearing on pages 251 to 254, inclusive, omitting, however, the names signed thereto and the affidavit appearing on page 254.

The plaintiffs in error intend to rely on the following assignments of error:

Assignments numbered first to twelfth, inclusive, and appearing on pages 259 to 261, inclusive.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

NEWTON A. PARTRIDGE. *Of Counsel.*

Receipt of a copy of above statement is acknowledged this — day of April, 1900.

——— ———,
Counsel for Defendants in Error.

266 STATE OF ILLINOIS, } ss:
County of Cook, }

Hobart W. Martin, being first duly sworn, on oath deposes and says that on the 18th day of April, 1900, he delivered to Francis A. Riddle, counsel for above-named defendants in error, a true and perfect copy of the foregoing statement.

HOBART W. MARTIN.

Subscribed and sworn to before me this 18th day of April, 1900.

{ Seal of Ferdinand W. Jaros, Notary Public, Cook County, Ill. }

FERDINAND W. JAROS,
Notary Public.

267 [Endorsed:] 17639. 525. In the Supreme Court of the United States. Thomas F. Farrell *et al.*, pl'ffs in error, *vs.* The West Chicago Park Commissioners, def't- in error. Statement of parts of record to be printed. Geo. W. Wilbur and Newton A. Partridge, for pl'ffs in error.

268 [Endorsed:] File No., 17,639. Supreme Court U. S., October term, 1899. Term No., 525. Thomas F. Farrell *et al.*, P. E., *vs.* The West Chicago Park Commissioners. Statement of errors & designation by pl'ffs in error of parts of record to be printed & proof of notice. Filed Apr. 20, 1900.

Endorsed on cover: File No. 17,639. Illinois supreme court. Term No., 201. Thomas F. Farrell *et al.*, plaintiffs in error, *vs.* The West Chicago Park Commissioners. Filed February 9, 1900.

No. 1216. 201

FILED
MAY 11 1900
JAMES H. McKENNEY,
Clerk.

No. 525.

IN THE

Supreme Court of the United States.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

MOTION FOR RULE TO SHOW CAUSE, ETC.

AND

PETITION AND AFFIDAVITS IN SUPPORT THEREOF.

NEWTON A. PARTRIDGE,
GEORGE W. WILBUR,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22775

IN THE

Supreme Court of the United States

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

MOTION.

Now on this day come the above named plaintiffs in error, by George W. Wilbur and Newton A. Partridge, their counsel, and move the Court that a rule be entered herein that said defendants in error, and each of them, show cause why they should not be punished for contempt in violating the orders of said Court and the statutes of the United States, in attempting to collect the special assessment involved in said proceedings.

Said plaintiffs in error, by their said counsel, also move the Court that Samuel B. Raymond, County Treasurer and ex-officio County Collector of the County of Cook, in the State of Illinois, be made a defendant in error in said cause.

Said motion is supported by a certain petition and several affidavits, together with an abstract of said proceedings and a brief and argument of the counsel for plaintiffs in error.

Respectfully submitted,

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

PETITION.

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.

Error to Supreme Court of State of Illinois.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioner, Judson G. Sherman, one of the above named plaintiffs in error, on his own behalf and on behalf of his co-plaintiffs in error, by George W. Wilbur and Newton A. Partridge, his attorneys, respectfully represent that he, your petitionor, signed a certain bond in said cause, conditioned for the payment of costs and damages, which bond was duly approved by the Chief Justice of the Supreme Court of the State of Illinois; that your petitioner also made a certain petition jointly with his co-plaintiffs in error, asking that a writ of error issue in said cause, which petition was allowed, and a citation was thereafter issued and signed by said Chief Justice of the Supreme Court of the State of Illinois; that said citation was afterwards served upon said defendants in error by the sheriff of the County of Cook, in the State of Illinois, all of which matters will appear by the records and files in said proceedings now in the custody of the clerk of said Supreme Court of the United States.

Your petitioner further states that, subsequent to the

service of said citation, said defendants in error returned the real estate of your petitioner, and of his co-plaintiffs in error, as delinquent to the county treasurer and ex-officio county collector of the County of Cook, in the State of Illinois, by reason of the supposed non-payment of said special assessment, set forth in the records in the above entitled cause.

Your petitioner further represents that said county treasurer and ex-officio county collector holds a certain warrant and claims to have authority for the collection of said special assessment against the property of your petitioner and against the property of the co-plaintiffs in error of your petitioner, and said county treasurer and ex-officio county collector demands of your petitioner that he pay to him, said county treasurer and ex-officio county collector, on account of said special assessment, the sum of $1,616.66.

Your petitioner further represents that said county treasurer and ex-officio county collector, acting under the order and direction of said defendants in error, threatens to sell the property of your petitioner and of his co-plaintiffs in error for said special assessment, and your petitioner fears that said county treasurer and ex-officio county collector will sell said property unless he, said county treasurer and ex-officio county collector, is restrained from so doing by the order of your Honorable Court.

Your petitioner further states, upon information and belief, and he so charges the fact to be, that said West Chicago Park Commissioners, in returning said property involved in the proceedings herein as delinquent, to said county treasurer and ex-officio county collector, in the manner aforesaid, are acting in defiance of the rules and

orders of your Honorable Court, and in violation of the laws of the United States in such case made and provided.

Respectfully submitted.

JUDSON G. SHERMAN.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Judson G. Sherman, being first duly sworn, on oath deposes and says that he is the petitioner named in the foregoing petition, and that he has heard read and has subscribed such petition; that he knows the contents thereof, and he verily believes the same to be true in substance and in fact.

JUDSON G. SHERMAN.

Subscribed and sworn to before me this 24th day of April, 1900.

FERDINAND W. JAROS,
Notary Public.

[SEAL.]

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

22777

AFFIDAVITS.

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*, *Plaintiffs in Error*, *vs.* The West Chicago Park Commissioners, *Defendants in Error.* } *Error to Supreme Court of State of Illinois.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Leonard C. Stebbins, being first duly sworn. on oath deposes and says that he is one of the above named plaintiffs in error; that he signed a certain bond for the payment of costs and damages in said cause, and he is informed and believes that a citation was issued in said matter and duly served upon said defendants in error in the manner and form required by law, and as will appear by said documents, which are a part of the record herein.

This affiant further states that he is informed and believes, and he so charges the fact to be, that said defendants in error, the West Chicago Park Commissioners, have returned the property of this affiant, together with the property of his several co-plaintiffs in error, to one S. B. Raymond, county treasurer and ex-officio county collector of the County of Cook in the State of Illinois, as delinquent and for collection, by reason of the alleged non-payment of the special assessment involved in the above entitled proceedings.

This affiant further states that on or about the 24th

day of April, 1900, said S. B. Raymond, county treasurer and ex-officio county collector of Cook County, in the State of Illinois, demanded of this affiant that he pay to him, said Raymond, the sum of $1,666.66, on account of the special assessment involved in said above entitled proceedings.

This affiant further states that he has heard read a petition herein of Judson G. Sherman, one of his co-plaintiffs in error. This affiant further states that said petition is true, in substance and in fact, as he verily believes, and this affiant asks that his affidavit herein may be considered as a part of said petition, and that your Honorable Court will make such order in the matter as may be just and equitable.

LEONARD C. STEBBINS.

Subscribed and sworn to before me this 24th day of April, 1900.

HOBART W. MARTIN,
Notary Public.

[NOTARIAL SEAL.]

22778

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.

Error to Supreme Court of State of Illinois.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

Hermann L. Paesler, being first duly sworn, on oath deposes and says that he is one of the above named plaintiffs in error, and that he makes this affidavit on his own behalf and on behalf of his co-plaintiffs in error; that he signed a certain bond in said cause with his co-plaintiffs in error, conditioned for the payment of costs and damages therein, which bond, as this affiant is informed and believes, is the usual bond in such cases; that a citation was issued in said cause on petition of the plaintiffs in error herein, which citation was duly served on the defendants in error in the manner required by law, as will appear by said documents which are a part of the record herein.

This affiant further states that said defendants in error, the West Chicago Park Commissioners, have returned the property of said plaintiffs in error to one S. B. Raymond, county treasurer and ex-officio county collector of the County of Cook in the State of Illinois, as delinquent, and for the purpose of having said county treasurer and ex-officio county collector collect from said plaintiffs in error the amount alleged to be due from them, respectively, on account of the special assessment involved in the above entitled proceedings.

This affiant further states that he has read the petition of Judson G. Sherman herein, and one of his co-plaintiffs in error; and affiant further states that said petition is true, in substance and in fact, as he verily believes. This affiant asks that his affidavit may be considered as a part of said petition, and that your Honorable Court will make such order in the premises as may be just and equitable.

HERMANN L. PAESLER.

Subscribed and sworn to before me this 24th day of April, 1900.

HOBART W. MARTIN,
Notary Public.

[NOTARIAL SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.
} *Error to Supreme Court of State of Illinois.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

William L. Brent, being first duly sworn, on oath deposes and says that he is one of the above named plaintiffs in error, and that he makes this affidavtt on his own behalf, and on behalf of his co-plaintiffs in error; that he signed a certain bond in said cause, with his co-plaintiffs in error, conditioned for the payment of costs and damages therein, which bond, as this affiant is informed and believes, is the usual bond in such cases; that a citation was issued in said cause on petition of the plaintiffs in error herein, which citation was duly served on the de-

fendants in error in the manner required by law, as will appear by said documents which are a part of the record herein.

This affiant further states that said defendants in error, the West Chicago Park Commissioners, have returned the property of said plaintiffs in error to one S. B. Raymond, county treasurer and ex-officio county collector of the County of Cook in the State of Illinois, as delinquent, and for the purpose of having said county treasurer and ex-officio county collector collect from said plaintiffs in error the amount alleged to be due from them, respectively, on account of the special assessment involved in the above entitled proceedings.

The affiant further states that he has heard read the petition of Judson G. Sherman herein, and one of his coplaintiffs in error; and affiant further states that said petition is true, in substance and in fact, as he verily believes. This affiant asks that his affidavit may be considered as a part of said petition, and that your Honorable Court will make such order in the premises as may be just and equitable.

WILLIAM L. BRENT.

Subscribed and sworn to before me this 25th day of April, 1900.

LYMAN H. PARTRIDGE,

[NOTARIAL SEAL.] *Notary Public.*

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.

Error to Supreme Court of State of Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Luke P. Colleran, being first duly sworn, on oath deposes and says that he is one of the above-named plaintiffs in error, and that he makes this affidavit on his own behalf, and on behalf of his co-plaintiffs in error; that he signed a certain bond in said cause, with his co-plaintiffs in error, conditioned for the payment of costs and damages therein, which bond, as this affiant is informed and believes, is the usual bond in such cases; that a citation was issued in said cause on petition of the plaintiffs in error herein, which citation was duly served on the defendants in error in the manner required by law, as will appear by said documents which are a part of the record herein.

This affiant further states that said defendants in error, the West Chicago Park Commissioners, have returned the property of said plaintiffs in error to one S. B. Raymond, county treasurer and ex-officio county collector of the County of Cook, in the State of Illinois, as delinquent, and for the purpose of having said county treasurer and ex-officio county collector collect from said plaintiffs in error the amount alleged to be due from them, respectively, on account of the special assessment involved in the above-entitled proceedings.

This affiant further states that he has heard read the petition of Judson G. Sherman, and one of his co-plaintiffs in error; and affiant further states that said petition is true, in substance and in fact, as he verily believes. This affiant asks that his affidavit may be considered as a part of said petition, and that your Honorable Court will make such order in the premises as may be just and equitable.

LUKE P. COLLERAN.

Subscribed and sworn to before this 26th day of April, 1900.

HOBART W. MARTIN,
Notary Public.

[NOTARIAL SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.

Error to Supreme Court of State of Illinois.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

James L. Monaghan and Edward J. McCarthy, being first duly sworn, on oath depose and say that they are plaintiffs in error in the above entitled cause, and they make this affidavit on their own behalf and on behalf of their co-plaintiffs in error; that they signed a certain bond in said proceedings, with their co-plaintiffs in error, conditioned for the payment of costs and damages therein, which bond, as these affiants are informed and believe, is the usual bond in such cases; that a citation was issued in said cause on petition of the plaintiffs in

error herein, which citation was duly served on the defendants in error in the manner required by law, as will appear by said documents which are a part of the record herein.

These affiants further state that said defendants in error, the West Chicago Park Commissioners, have returned the property of said plaintiffs in error to one S. B. Raymond, county treasurer and ex-officio county collector of the County of Cook in the State of Illinois, as delinquent, and for the purpose of having said county treasurer and ex-officio county collector collect from said plaintiffs in error the amount alleged to be due from them, respectively, on account of the special assessment involved in the above entitled proceedings.

These affiants further state that they have heard read the petition of Judson G. Sherman herein, and one of their co-plaintiffs in error; and affiants further state that said petition is true, in substance and in fact, as they verily believe. These affiants ask that this affidavit may be considered as a part of said petition, and that your Honorable Court will make such order in the premises as may be just and equitable.

JAMES L. MONAGHAN.
E. J. MCCARTHY.

Subscribed and sworn to before me this 26th day of April, 1900.

PHILIP KNOPF,
County Clerk, Cook County, Ill.

[SEAL OF COUNTY COURT, COOK CO., ILL.]

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

No. 201

22781

Office Supreme Court
FILED
MAY 11 1900
JAMES H. McKENNEY,
Clerk

No. 625.

IN THE

Supreme Court of the United States.

THOMAS P. FARRELL et al.,
Plaintiffs in Error,
vs.
THE WEST ORCHARD PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois.

ABSTRACT OF RECORD IN SUPPORT OF MOTION FOR RULE TO SHOW CAUSE, ETC.

NEWTON A. PARTRIDGE.
GEORGE W. WILBUR.
Counsel for Plaintiffs in Error.

Gibbons-Knox Printing Company, 86 Fourth Ave., Chicago.

IN THE

Supreme Court of the United States

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of Illinois

ABSTRACT OF RECORD IN SUPPORT OF MOTION FOR RULE TO SHOW CAUSE, ETC.

Page of Record.

Writ of error from Supreme Court of the United States to the Supreme Court of Illinois, bearing date January 23, 1900, signed by James T. Jones, clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by James H. Cartwright, Chief Justice of the Supreme Court of Illinois.

Certificate of clerk of Supreme Court of Illinois to writ of error, bearing date February 3, 1900.

Citation directed to the West Chicago Park Commissioners, and issued in pursuance of said writ of error, citing them to appear at a Supreme Court of the United States within thirty days from date thereof, pursuant to

a writ of error filed in the clerk's office of the Supreme Court of the State of Illinois, wherein Thomas F. Farrell *et al.* are plaintiffs in error and said West Chicago Park Commissioners are defendants in error, to show cause, if any there be, why the judgment against the plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, this 24th day of January, A. D. 1900.

(Signed) JAMES H. CARTWRIGHT,
Chief Justice Supreme Court of Illinois.

Writ served on the West Chicago Park Commissioners, a corporation, by delivering a copy thereof to Ernest G. Schubert, secretary of said corporation, the 2nd day of February, 1900.

The president of said corporation not found in my county.

(Signed) ERNEST G. MAGERSTADT, *Sheriff*,
By THOMAS J. MCNICHOLS, *Deputy*.

Certificate of clerk of the Supreme Court of Illinois, stating that on the 3rd day of February, 1900, a copy of foregoing citation and return thereon was lodged in his office in Springfield, Illinois.

Certificate dated February 3, 1900.

Certificate of clerk of Supreme Court of Illinois to transcript of record on pages numbered from 1 to 257, inclusive.

Certificate dated February 3, 1900.

1 Placita of Supreme Court, showing that transcript of record was filed in said court on October 5, 1898.

225 On December 21, 1898, the following order was entered in the Supreme Court of Illinois:

Thomas F. Farrell *et al.*
No. 498 *vs.* } *Appeal from County Court, Cook.*
West Chicago Park Commissioners.

(Here follows order reversing said judgment and remanding said cause to the County Court of Cook County for such other and further proceedings as to law and justice shall appertain.)

226 On February 9, 1899, an order was entered in said cause allowing a petition for rehearing.

228 On October 30, 1899, an order was entered in said cause affirming the judgment of the County Court.

231 Opinion of the court, bearing date October 30, 1899.

237 On November 22, 1899, an order was entered by James H. Cartwright, Chief Justice, staying all further proceedings in said cause, on a petition for rehearing, until the next term of court, there being probable ground for granting a rehearing.

238 On December 11, 1899, an order was entered in said cause overruling and denying the petition for rehearing.

240 Petition for citation in said cause, directed to the Hon. James H. Cartwright, Chief Justice of the Supreme Court of Illinois.

241 Said petition contains the following:

"It appears in the record now remaining in the Supreme Court of Illinois that certain rights and privileges were claimed under the Constitution of the United States by said Thomas F. Farrell *et al.*, appellants, and that said Supreme Court of the State of Illinois erroneously

decided against said rights and privileges of said Thomas F. Farrell *et al.*, appellants, which were specially set up and claimed under said constitution; and, further, that the validity of the authority exercised by said State of Illinois was drawn in question in said suit by said Thomas F. Farrell *et al.*, appellants, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said Supreme Court of Illinois was in favor of the validity of said authority so exercised; from all of which said Thomas F. Farrell *et al.*, appellants, allege that it appears in the said record and proceedings in said suit manifest error has occurred, to the great damage of said Thomas F. Farrell *et al.*, appellants."

(Prayer for citation.) "That a citation may be issued herein, pursuant to law, citing and admonishing the West Chicago Park Commissioners to be and appear at the Supreme Court of the United States, at Washington, according to the usual course and practice in such cases; that the supersedeas bond herewith presented to the court may be duly approved, and that such other and further orders and proceedings may be had and entered herein, as may be necessary fully to grant to said Thomas F. Farrell *et al.* the relief herein prayed for, according to the usual course and practice in such cases."

(Names of plaintiffs in error.)

248 (Title of cause.)

ORDER.

Upon motion of George W. Wilbur, attorney for appellants, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be and hereby is fixed at five hundred dollars ($500).

250 Order signed January 20, 1900, by James H. Cartwright, Chief Justice of the Supreme Court of Illinois.

251 Bond of plaintiffs in error, dated December 11, 1899.

252 Said bond contains the following:

"Whereas, said principal obligors have sued out a writ of error from the Supreme Court of the United States to review said judgment of affirmance, and have prayed that the same be made a supersedeas,

"Now, if the said principal obligors above named shall prosecute their said writ of error with effect, and if they fail to make their plea good, shall answer all damages and costs, then this obligation to be void, otherwise to remain in full force and effect."

(Names of plaintiffs in error.)

254 Affidavit of surety to bond.

258 Assignment of errors.

Respectfully submitted.

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

22786

No. 525, 201

Brf. of Partridge for P. in E.

Office Supreme Court
FILED
MAY 11 1900
JAMES H. McKENNEY,
Clerk

No. 525.

Filed May 11, 1900.

IN THE

Supreme Court of the United States.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

BRIEF AND ARGUMENT IN SUPPORT OF MOTION FOR RULE TO SHOW CAUSE, ETC.

NEWTON A. PARTRIDGE,
GEORGE W. WILBUR,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22787

IN THE

Supreme Court of the United States.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to
Supreme Court
of Illinois

BRIEF AND ARGUMENT IN SUPPORT OF MOTION FOR RULE TO SHOW CAUSE, ETC.

MAY IT PLEASE THE COURT:

This is a special assessment proceedings brought by the West Chicago Park Commissioners for the purpose of obtaining the cost of the completed improvement of Douglas boulevard, in Chicago, Illinois.

The proceedings were commenced in the County Court of Cook County, Illinois, in 1896. On motion of plaintiffs in error the petition was dismissed, and an appeal was taken by defendants in error to the Supreme Court of Illinois. The latter court reversed the judgment of the trial court, and remanded the cause. A subsequent trial in the County Court resulted in a judgment in favor of the West Chicago Park Commissioners, from which judgment the plaintiffs in error took an appeal to the Su-

preme Court of Illinois, where the judgment was again reversed and the cause remanded. A petition for rehearing was filed by the West Chicago Park Commissioners, which petition was allowed, and on a reconsideration of the case the Supreme Court reversed its former finding in favor of the plaintiffs in error, and directed a judgment confirming the County Court.

The latter order was entered October 30, 1899, and the plaintiffs in error then presented a petition for rehearing. On November 22, 1899, a stay order was entered as to the petition for rehearing made on behalf of plaintiffs in error. On December 11, 1899, an order was entered in the Supreme Court overruling and denying the petition for rehearing so made on behalf of plaintiffs in error.

Thereupon the plaintiffs in error sued out a writ of error from the Supreme Court of the United States to the Supreme Court of Illinois, upon their petition. The writ of error was signed on January 23, 1900, by the clerk of the Circuit Court of the United States for the Southern District of Illinois, such writ having been allowed by the chief justice of the Supreme Court of Illinois.

A citation directed to the West Chicago Park Commissioners was issued on January 24, 1900, and signed by said James H. Cartwright. The citation was served on the West Chicago Park Commissioners by the sheriff of Cook County, Illinois, on the 2d day of February, 1900. The transcript of record in the above cause was filed with the clerk of the Supreme Court of the United States on or about the 9th day of February, 1900. Thereafter Mr. Francis A. Riddle entered his appearance as counsel for defendants in error.

The petition for citation asks that the writ of error be made a supersedeas, and the bond of plaintiffs in error, among other things, provides that if the principal obligors shall fail to prosecute their writ of error with effect they will pay all costs and damages herein. Said bond is, as we understand, in the usual form of a supersedeas bond.

The plaintiffs in error herein respectfully show, however, that the defendants in error, not regarding said writ of error, and the bond filed herein, and the statutes of the United States governing such matters, are attempting to collect, from the plaintiffs in error, the special assessment involved in the proceedings herein; that to accomplish such purpose the defendants in error have returned as delinquent, to the county treasurer and ex-officio county collector of Cook County, Illinois, the respective pieces of property involved herein, on account of the alleged non-payment of said special assessment.

Owing to the action of the defendants in error in the premises, we present herewith a motion, asking that a rule be entered against the individuals composing the West Chicago Park Commissioners, for them to show cause why they should not be punished for contempt in violating the terms and conditions of said writ of error. We also ask that Samuel B. Raymond, county treasurer and ex-officio county collector of the County of Cook, in the State of Illinois, be made a defendant in error, and that a rule be entered against him restraining him from making any further effort for the collection of said assesment, until the further order of this Court.

In support of said motion we present herewith the verified petition of Judson G. Sherman and the affidavits of Leonard C. Stebbins, Hermann L. Paesler, William

L. Brent, Luke P. Colleran, James L. Monaghan and Edward J. McCarthy. We also present herewith proof of service of notice upon the members of said West Chicago Park Commissioners and the secretary thereof, together with service of copies of the various documents presented herewith upon Mr. Francis A. Riddle, counsel for the defendants in error, and service of notice, together with copies of certain papers, upon S. B. Raymond, county treasurer as aforesaid.

The plaintiffs in error contend, by reason of the writ of error herein and other records and proceeding, together with the bond conditioned for the payment of costs and damages, that no further proceedings should be taken in regard to said assessment, in so far as it relates to the property of plaintiffs in error, until the final disposition of said proceedings in this Court.

The proceedings herein, as they appear to us, are in substantial compliance with the requirements of your Court and the statutes of the United States; that the defendants in error, by attempting to collect the assessments involved in such proceedings, are acting in defiance of said writ of error and of the statutes referred to.

The practice seems to be so well established and the statutes governing such matters are so plain, that citation of authorities would possibly be out of place. It is held in a number of cases that a writ of error becomes *per se* a supersedeas upon compliance with the statute.

Tiernan v. *Booth*, 4 Fed. Rep., 620.
Booth v. *Tiernan*, 109 U. S., 205.

The plaintiffs in error respectfully ask that your Honorable Court will make such order in the matter as may

22789

be just and proper, so that the rights of the plaintiffs in error may be protected.

It is not the desire of the plaintiffs in error to cause unnecessary trouble or expense to be put upon the defendants in error, yet we cannot avoid the conclusion that the defendants in error are seeking to cause the plaintiffs in error much annoyance and the expenditure of considerable money in maintaining their rights in the premises.

Trusting your Honorable Court may be inclined to grant the motion herein, the above is

Respectfully submitted.

NEWTON A. PARTRIDGE,
GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

No. 201.

Office Supreme Court U.S.
FILED
OCT 1 1900
JAMES H. McKENNEY,
Clerk.

Gen. No. 17,639. Term No. 201.

IN THE

Supreme Court of the United States.

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of Illinois.

ABSTRACT OF "STATEMENT AND EXHIBITS" SHOWING DISREGARD OF SUPERSEDEAS AND OF RULE TO SHOW CAUSE.

GEORGE W. WILBUR,
NEWTON A. PARTRIDGE,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22792

IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of Illinois.

To the Honorable, the Judges of the Supreme Court of the United States:

The undersigned, JAMES L. MONAGHAN, respectfully represents that he is one of the above named plaintiffs in error, and that he makes the following statement on behalf of all of said plaintiffs in error.

The undersigned further respectfully represents that a writ of error was sued out in the above entitled cause from this court, and citation issued thereon, on or about the 23rd day of January, 1900; that a supersedeas bond was approved and filed in said matter, and that the citation herein was duly served on said defendants in error on or about the first day of February, 1900. All of said matters will fully appear in and by the records, files and orders of your Honorable Court.

The undersigned further respectfully represents unto your Honorable Court that, after the service of said citation upon said defendants in error, they returned to the county treasurer and ex-officio county collector of Cook County, in the State of Illinois, as delinquent and for collection, the special assessment which is the subject-matter involved in the above entitled cause.

The undersigned further respectfully represents unto your Honorable Court that after the return of said assessment for collection as aforesaid, a certain petition, supported by several affidavits, was duly filed and presented to your Honorable Court, on behalf of plaintiffs in error, asking that a rule be entered against said defendants in error to show cause why they should not be punished for contempt in returning said special assessment for collection; that a brief and argument was filed on behalf of said plaintiffs in error, to which said defendants in error, by their counsel, made reply.

The undersigned further respectfully represents unto your Honorable Court that the matter of said motion came on for disposition on the 21st day of May, 1900, when and where an order was entered against said defendants in error, directing that they show cause why they should not be punished for contempt, which rule is returnable on the 8th day of October next, at 12 o'clock noon, or as soon thereafter as counsel can be heard. The undersigned attaches hereto, as "Exhibit A," and makes the same a part hereof, a copy of a certified copy of said order, together with the manner and form of service thereof upon the counsel for defendants in error, and upon the individual members of the Board of West Chicago Park Commissioners, and also upon the county treasurer and ex-officio county collector of Cook County, Illinois.

The undersigned further respectfully represents unto your Honorable Court that, notwithstanding the entry of said order on said 21st day of May, 1900, said defendants in error permitted and caused said county treasurer and ex-officio county collector to advertise for sale in *The Inter Ocean*, a daily newspaper printed and published in the City of Chicago, in said County of Cook, the property of said plaintiffs in error, by reason of the alleged non-payment of said special assessment. The undersigned attaches hereto as "Exhibit B," and makes the same a part hereof, a certified copy of the delinquent list above referred to, describing the property of plaintiffs in error, together with the certificate of publication thereof.

The undersigned further respectfully represents unto your Honorable Court that, after the publication of said delinquent list, as herein set forth, the counsel for plaintiffs in error, in order to prevent the entry of a judgment of sale against their respective pieces of property, was compelled to and did file in the County Court of said Cook County, on July 11, 1900, certain objections to the entry of such judgment, a certified copy of which objections are attached hereto as "Exhibit C," and made a part hereof.

The undersigned further respectfully represents unto your Honorable Court that said defendants in error and their said counsel permitted said matter of the application for judgment of sale against the respective pieces of property of the plaintiffs in error herein, to remain pending and undisposed of in said County Court of Cook County, until on or about the 26th day of July, 1900, when, upon motion of Frances A. Riddle, counsel for defendants in error herein, and Julius A. Johnson, attorney

for said county treasurer and ex-officio county collector of said Cook County, a pretended order was entered in said court which purports to take from said delinquent list the various pieces of property of the plaintiffs in error. The undersigned attaches hereto, as "Exhibit D," a certified copy of said pretended order, and makes the same a part hereof.

The undersigned further respectfully represents unto your Honorable Court that afterwards, and on the 27th day of July, 1900, the matter of the disposition of the objections to judgment of sale so filed in said County Court of Cook County, by counsel for plaintiffs in error herein, came on for disposition and determination in said County Court; that at said time the counsel for plaintiffs in error was not present in court, but Francis A. Riddle, counsel for defendants in error herein, was present and entered a motion to overrule said objections, and he also entered a further motion for a judgment of sale against the property described in said objections. The said County Court thereupon granted each of said motions, and overruled said objections and entered a judgment of sale against the various pieces of property described therein. The undersigned attaches hereto as "Exhibit E," a certified copy of the order herein lastly referred to, and makes the same a part hereof.

The undersigned further respectfully represents unto your Honorable Court that, by reason of the acts of the defendants in error in the premises, as shown by the various exhibits attached hereto, the plaintiffs in error have been caused great annoyance, and they have been subjected to unjust criticism and humiliation by reason of having their property advertised as delinquent in a public newspaper in the City of Chicago; that in order to prevent

a sale of their property, their counsel was compelled to file objections in the manner aforesaid; that prior to said the 21st day of May, 1900, their said counsel, in order to protect the rights of plaintiffs in error in the premises, was compelled to prepare certain documents and to present an argument to your Honorable Court, as hereinabove referred to; that the presentation of such documents and argument required the personal attendance of counsel for plaintiffs in error before your Honorable Court on or about the 14th day of May, 1900, all of which resulted in a large and unnecessary expense to plaintiffs in error, as well as the great annoyance incident thereto.

The undersigned further respectfully represents that the attendance of counsel before your Honorable Court on the day fixed by the rule for the defendants in error to show cause why they should not be punished for contempt, and the preparation by him of this statement and his suggestions in relation thereto, have inflicted upon plaintiffs in error additional annoyance and expense, the greater part of which could have been avoided had the defendants in error given greater consideration to said order of your Honorable Court so entered on May 21, 1900.

The undersigned further respectfully states unto your Honorable Court, that it is a matter of great surprise to himself and to his co-plaintiffs in error, that the defendants in error and their counsel should show such a lack of respect and obedience to the rules and orders of your Honorable Court. And the undersigned suggests that the action of the defendants in error and their counsel in the premises, may require further consideration by your Honorable Court, to the end that they may realize not only the propriety but the necessity of giving due heed

and proper regard to the statutes of the United States and the rules and orders of your Honorable Court.

The undersigned further represents unto Your Honorable Court that, by reason of the wrongful and contumacious actions of the defendants in error, as above set forth, additional services of counsel for plaintiffs in error have been made necessary, and have been rendered to a large amount, and expenses have been incurred for printing and transportation, the aggregate of all such additional expenses, the undersigned verily believes, amounts to the sum of fifteen hundred dollars ($1,500.00). The undersigned therefore respectfully suggests to your Honorable Court, and he trusts that it may be proper so to do, the propriety of directing the defendants in error, being the individual members of the Board of West Chicago Park Commissioners, to reimburse the plaintiffs in error in such an amount as may be a just and proper compensation for the expenses incurred as a result of the conduct of the defendants in error in the premises.

All of which is respectfully submitted.

JAMES L. MONAGHAN

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

James L. Monaghan being first duly sworn, on oath deposes and says that he is one of the plaintiffs in error in the above entitled cause; that he has read and subscribed the foregoing statement, and knows the contents thereof, and that the same is true, in substance and in fact, as he verily believes.

JAMES L. MONAGHAN.

Subscribed and sworn to before me this 26th day of September, 1900.

PHILIP KKOPF,

[SEAL.] *Clerk of the County Court of Cook County, Illinois.*

GEO. W. WILBUR and
NEWTON A. PARTRIDGE,
Counsel for Plaintiffs in Error.

"EXHIBIT A."

[Printed copy of motion for rule to show cause, etc., and petition and affidavits in support thereof.]

SUPREME COURT OF THE UNITED STATES.

No. 525, October Term, 1899.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners.

On consideration of the petition of the plaintiffs in error in this cause,

It is now here ordered by the court that cause be shown by the defendants in error before this court at the City of Washington, on Monday, October 8th, 1900, at 12 o'clock noon of that day, or as soon thereafter as counsel can be heard, why they should not be punished for contempt as prayed in said petition.

Per. MR. CHIEF JUSTICE FULLER.

May 21, 1900.

SUPREME COURT OF THE UNITED STATES.

I, JAMES H. MCKENNEY, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing are true copies of the petition and rule to show cause granted thereon in the case of Thomas F. Farrell *et al.*, Plaintiffs in Error, *vs.* The West Chicago Park Commissioners, No. 525, October Term, 1899, as the same remain upon the files and records of said Supreme Court.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said Supreme Court, at the City of Washington, this 29th day of May, A. D. 1900.

[SEAL] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Service of above order accepted by receipt of copy of same this 14th day of June, 1900.

FRANCIS A. RIDDLE,
Counsel for West Chicago Park Commissioners, Defendant in Error.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

I have served the within order to show cause within my District in the following manner, to-wit:

Upon Joseph W. Suddard, Commissioner and President of the Board of West Chicago Park Commissioners, by reading the same to and within his presence and hearing, at the same time delivering to him a true copy thereof, on the 16th day of June, A. D. 1900.

Upon Charles B. Pavlicek, Andrew J. Graham and F. M. Blount, Commissioners, by reading the same to and within their presence and hearing, at the same time delivering a true copy thereof to each of them personally on the 16th day of June, A. D. 1900. At the same time I delivered to each of the above named commissioners a copy of the motion for rule to show cause, etc., and petition and affidavits in support thereof. I did not read the said motion for rule to show cause and petition and affidavits in support thereof, to any of the above named commissioners, for the reason that in each instance the above named commissioners expressly waived the reading thereof.

JOHN C. AMES,
United States Marshal, Northern District of Illinois.
By WM. E. CASS,
Deputy.

Fees—

4 Services	$8.00
4 Miles	24
	$8.24

Received payment of the above amount from the attorneys of the plaintiffs in error.

JOHN C. AMES,
U. S. Marshal.

IN THE SUPREME COURT OF THE UNITED STATES.

Of the October Term, 1899.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,
vs.
The West Chicago Park Commissioners,
Defendants in Error.
} *Error to Supreme Court of State of Illinois.*

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Hobart W. Martin, being first duly sworn, on oath deposes and says that he served the foregoing order and petition thereto attached upon Anton Petersen, one of the aboved named defendants in error, and a member of the Board of West Chicago Park Commissioners at the time of the entry of said order, by delivering to him a true and perfect copy thereof on the 14th day of June, 1900; and affiant also served the foregoing order and petition thereto attached, upon Frank T. Fowler, one of the above named defendants in error, and a member of said Board of West Chicago Park Commissioners at the time of the entry of said order, by leaving a true and perfect copy thereof at the place of business of said Fowler, with Miss L. Barry, an employe, on the 14th day of June, 1900; and affiant also served the foregoing order and petition attached thereto upon Charles W. Kopf, one of the above named defendants in error, by leaving a true and perfect copy thereof at his place of business with B. C. Weiler, on the 26th day of June, 1900. And further affiant saith not.

HOBART W. MARTIN.

Subscribed and sworn to before me this 26th day of July, 1900.

FRANK W. DUHA,
Notary Public.

[SEAL]

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COOK COUNTY. } ss.

I have served the within order to show cause within my county in the following manner, to wit:

Upon the West Chicago Park Commissioners by reading the same to and at the same time delivering a copy thereof to Joseph W. Suddard, President of the said West Chicago Park Commissioners, this 26th day of June, 1900, and at the same time I delivered a copy of the "Motion for Rule to Show Cause, Etc.," and petition and affidavits in support thereof to him. I did not read the said motion for rule to show cause and petition and affidavits in support thereof to the said Joseph W. Suddard, President of the said West Chicago Park Commissioners, for the reason that the said President expressly waived the reading thereof.

ERNEST J. MAGERSTADT, *Sheriff*,
By GEORGE J. VIZARD, *Deputy*.

Also I have served the within order to show cause within my county in the following manner, to-wit:

Upon Samuel B. Raymond, County Treasurer and ex-officio County Collector of the County of Cook, in the State of Illinois, by reading the same to him and at the same time delivering a copy thereof to him, this 26th day of June, 1900, and at the same time I delivered a copy thereof of the "Motion for Rule to Show Cause, Etc.," and petition and affidavits in support thereof to him. I did not read the said motion to show cause and petition and affidavits in support thereof to the said Samuel B. Raymond, ex-officio County Collector of the County of

Cook in the State of Illinois, for the reason that he expressly waived the reading thereof.

ERNEST J. MAGERSTADT, *Sheriff*,
By THOMAS J. MCNICHOLS, *Deputy*.

Received from attorneys for plaintiffs in error two ($2.00) dollars for service of the within order.

ERNEST J. MAGERSTADT, *Sheriff*.

"EXHIBIT B."

Placita.

Be it remembered that heretofore, to-wit, on the 21st day of June, in the year of our Lord one thousand nine hundred, the same being one of the days of the June term of the County Court of Cook County, the following certificate of publication was filed with the clerk of said court, to-wit:

Office of the County Treasurer and ex-officio County Collector of Cook County, State of Illinois.

CHICAGO, June 15, 1900.

The following is a list of the lots and lands in the Town of West Chicago in said county upon which remains due and unpaid a special assessment levied and made by the Board of West Chicago Park Commissioners to pay the cost of the improvement of Douglas boulevard from southeasterly line of Garfield Park to west line of Douglas Park, in accordance with the terms of an ordinance passed by said board and confirmed by the County Court of Cook County, also showing the names of the owners thereof, as far as known, and the total amount of said assessment as assessed and confirmed as aforesaid, now remaining due and unpaid on each tract of land or lot, according to the delinquent return made to the County Collector as required by law.

Explanatory—In the following list the figures in the column headed "$" (meaning dollars) and "cts" (meaning cents) represent the amount of the said assessment due on each tract of land or lot respectively.

[Here follows descriptions of real estate.]

Public notice is hereby given that the undersigned, County Treasurer and ex-officio County Collector of Cook County, State of Illinois, will apply to the County Court of said county at the July term thereof, to commence on the second Monday in July, A. D. 1900, being the ninth day of July, A. D. 1900, for judgment against the delinquent lands, town lots and real property described in the foregoing list for the amount due and unpaid on such lands, town lots and real property for said special assessments as hereinbefore set forth, and interest and costs due thereon, and for an order to sell said lands, town lots, and real property for the satisfaction thereof; and that on the fourth Monday next succeeding the second Monday in July, A. D. 1900, being the sixth day of August, A. D. 1900, at the hour of 9 o'clock A. M., all the lands, town lots and real property described in the foregoing lists, against which judgments shall have been rendered for the amounts of said special assessment, interest and costs thereon, and for the sale of which an order shall have been made, will be exposed to public sale at the county building, where the county court is held, in said county, situate on Clark street, between Randolph and Washington streets, in the City of Chicago, in said county, for the amounts of said special assessments, as hereinbefore set forth, and interest and costs due thereon, respectively.

Dated Chicago, June 15, 1900.

S. B. RAYMOND,

County Treasurer and ex-officio County Collector of Cook County, Illinois.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Wm. Penn Nixon, being first duly affirmed, depose and say that I am the publisher of the Daily Inter Ocean, and that the foregoing list of land and lots contained in the newspaper known as The Daily Inter Ocean, to which this certificate is attached, is a list of the delinquent lands and lots upon which remains due and unpaid the taxes levied and assessed for the year 1899 (and prior years), together with the amounts for which said lands had been previously forfeited to the State of Illinois (when such forfeitures are noted) and which remained due and unpaid on the first day of November, A. D. 1899; and also a list of delinquent lands and lots upon which remains due and unpaid special assessments and special taxes levied and assessed by the following corporate authorities, viz. "The Village of Barrington," "The Village of Blue Island," "The Town of Cicero," "The Village of Chicago Heights," "The Village of Des Plaines," "The City of Evanston," "The Village of Franklin Park," "The Village of Grossdale," "The Village of Harlem," "The City of Harvey," "The Village of La Grange," "The Village of Maywood," "The Village of Melrose Park," "The Village of Morgan Park," "The Village of North Harvey," "The Village of Palatine," "The Village of Park Ridge," "The Village of Riverside," "The Village of River Forest," "The Village of River View," "The Village of West Hammond," "The Village of Western Springs," "The Village of Wilmette," "The Village of Winnetka," "The City of Chicago," "The Board of South Park Commissioners," "The Board of West Park Commissioners," "The Ridge Avenue Park District," "The Town of Evanston," "The Town of Lake View," with notices hereto attached, and

22799

that the same were duly published and advertised, pursuant to law, once in the Daily Inter Ocean, a newspaper printed and published in the County of Cook and State of Illinois; and the whole of said advertisement was contained in one edition of said newspaper, being a newspaper of general circulation throughout said county, and that the date of the newspaper containing the same was the 15th day of June, A. D. 1900.

In witness whereof I have hereunto set my hand and seal this 18th day of June, A. D. 1900.

WM. PENN NIXON,
Publisher.

Subscribed, declared and affirmed to before me this 18th day of June, A. D. 1900.

[SEAL] J. R. FORD,
Notary Public.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of portion of delinquent list contained in the certificate of publication filed in said office on the 21st day of June, A. D. 1900, in the matter of the application of Samuel B. Raymond, county treasurer and ex-officio county collector of the County of Cook and State of Illinois, for judgment on delinquent taxes and special assessments for the year 1899 and priors, all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 24th day of September, A. D. 1900.

PHILIP KNOPF,
[SEAL] *Clerk of the County Court.*

"EXHIBIT C."

Placita.

Be it remembered that heretofore, to-wit, on the 11th day of July in the year of our Lord one thousand nine hundred, the same being one of the days of the July term of the County Court of Cook County, the following objections were filed with the clerk of said court in words and figures as follows, to-wit:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE COUNTY COURT OF COOK COUNTY.

Of the July Term, 1900.

In the Matter of the Application of The County Treasurer and ex-officio County Collector of said County and State, for a judgment of sale for the special assessment made by the Board of West Chicago Park Commissioners to pay for the cost of the improvement of Douglas Boulevard from Garfield Park to Douglas Park.

Now on this day come the owners of or the parties who are interested in the several pieces of real estate set forth and described in the schedule of lands attached hereto, and object to a judgment of sale against said several pieces of real estate or any thereof, for the reasons stated in the instrument hereto attached and known as "Objections to Judgment of Sale."

GEO. W. WILBUR,
Attorney for Objectors.

[Here follows "Schedule of Lands."]

22800

OBJECTIONS TO JUDGMENT OF SALE.

1. The premises herein described were not returned as delinquent in the manner and form required by law.

2. The county treasurer and ex-officio county collector of the County of Cook did not advertise said premises as delinquent in the manner and form required by law.

3. Said pretended assessment was not confirmed in said County Court in the manner and form alleged in the notices herein and in the advertisement made by said county treasurer and ex-officio county collector.

4. The ordinance for said improvement is incomplete, informal and otherwise invalid.

5. The ordinance authorizing said improvement does not specify the nature, character, locality and description of the improvement.

6. Said original assessment proceedings in said County Court are void, because said West Chicago Park Commissioners, at the time of the entry of judgment of confirmation therein, did not have the legal consent of the owners of the real estate abutting on said boulevard at the time of the passage of the pretended ordinance for the making of said improvement.

7. Said original assessment proceedings, which are the basis of the application herein, are void, because the proceeding upon which said second proceedings were based were declared void by the Supreme Court of the State of Illinois.

8. The County Court has no jurisdiction herein to enter a judgment of sale as to the property of these objectors, for the reason that the judgment of confirmation herein is contrary to the constitution of the State of Illinois, and is therefore void.

9. The County Court has no jurisdiction herein as to

the owners of said real estate or as to said real estate, because said original assessment proceedings are contrary to the constitution of the State of Illinois, in that said assessment is not uniform as to persons and property.

10. Said original assessment proceedings are void becauce the assessment is not made according to the value of the property assessed therein, but is made in an arbitrary way by uniform assessment against the frontage of the several pieces of real estate herein described.

11. Said County Court is without jurisdiction herein, because the matter of said original assessment proceedings is now pending in the Supreme Court of the United States by writ of error to the Supreme Court of the State of Illinois.

12. The proceedings herein and said original assessment proceedings are contrary to the constitution of the United States, in that the owners of the various pieces of real estate herein described are about to be deprived of their property without due process of law.

13. The County Court herein has no jurisdiction either as to the persons or property of objectors, for the reason that there was no valid ordinance and no valid assessment in said original assessment proceedings.

* * * * *

For which several reasons the objectors herein ask that a judgment of sale, as to their respective pieces of property, be denied.

GEO. W. WILBUR,
Attorney for Objectors.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, Philip Knopf, clerk of the County Court of Cook County, in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of certain objections filed with the clerk of said court on the 11th day of July, A. D. 1900, in the matter of the application of the county treasurer and ex-officio collector of the County of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1899 and previous thereto, objections No. 121 special, all of which appears from the records and files of my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said county, this 14th day of September, A. D. 1900.

PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

"EXHIBIT D."

Placita.

Be it remembered that heretofore, to-wit: on the 26th day of July, in the year of our Lord one thousand nine hundred, the same being one of the days of the July Term of the County Court of Cook County, the following among other proceeding were had and entered of record in said court, to-wit:

In the matter of the application of S. B. Raymond, County Treasurer and ex-officio Collector of Cook County, Illinois, for judgment against certain delinquent lands, town lots and real property for the amount due and unpaid upon the same for a certain special assessment levied by the West Chicago Park Commissioners to pay the cost of improving Douglas boulevard from the southeasterly line of Garfield Park to the west line of Douglas Park, in the City of Chicago, County of Cook and State of Illinois, said application for judgment being made by said County Treasurer at the July term, A. D. 1900, of said County Court.

And now comes the West Chicago Park Commissioners by Francis A. Riddle, its attorney, and Samuel B. Raymond, County Treasurer and ex-officio County Collector of Cook County, by Julius A. Johnson, his attorney, and show to the court that after the order was entered by the Supreme Court of Illinois on October 13th, A. D. 1899, affirming the order heretofore entered in this court confirming said special assessment so levied by West Chicago Park Commissioners for the improvement of said Douglas boulevard from the southeasterly line of Garfield Park to the west line of Douglas Park, as aforesaid, the several persons owning or interested in the following described lots, parcels and pieces of real estate specially assessed by said West Chicago Park Commissioners for benefits resulting to each of such lots, parcels and pieces of real estate from said improvement of said Douglas boulevard as aforesaid, namely:

[Here follows descriptions of real estate.]

sued out a writ of error in the Supreme Court of the

United States, and which writ of error now operates as a supersedeas against further proceedings to enforce the collection of said special assessment against said several lots, parcels and pieces of real estate respectively.

Now, therefore, on motion of Francis A. Riddle, attorney for said West Chicago Park Commissioners, and Julius A. Johnson, attorney for said county treasurer, it is, therefore, ordered that the said application for judgment against each and every of the lots, parcels and pieces of real estate hereinabove described, be withdrawn, and that the judgment sale and redemption record kept in the office of said county treasurer, for that purpose, for the year 1900, in which said several lots, parcels and pieces of real estate were listed and entered, be marked on the margin thereof, opposite the entry of the respective descriptions of said lots, parcels and pieces of real estate, as follows:

"Withdrawn from application for judgment, but without prejudice to the right of the said county treasurer to again apply for judgment, and without prejudice also to the right of West Chicago Park Commissioners to return said several lots, parcels and pieces of real estate delinquent for the non-payment of said special assessment, and without prejudice to the right of said park commissioners to direct said county treasurer to apply for judgment against said several lots, parcels and pieces of real estate at any time after the writ of error so sued out and now pending in the Supreme Court of the United States shall have been finally determined by said Supreme Court."

STATE OF ILLINOS, } ss.
COOK COUNTY. }

I, Philip Knopf, clerk of the County Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order entered of record July 26th, 1900, in a certain cause in said court—In the matter of the application of the county treasurer and ex-officio collector of the County of Cook, in the State of Illinois, for judgment of sale for the delinquent taxes and special assessments levied and assessed for the year 1899 and previous thereto.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 4th day of September, 1900.

PHILIP KNOPF,

[SEAL] *Clerk.*

"EXHIBIT E."

Placita.

Be it remembered that heretofore, to-wit, on the 27th day of July, in the year of our Lord one thousand nine hundred, the same being one of the days of the July term of the County Court of Cook County, the following, among other proceedings, were had and entered of record in said court, to-wit:

In the matter of the Application of The County Treasurer and ex-officio County Collector of said County and State, for a Judgment of Sale for the Special Assessment made by the Board of West Chicago Park Commissioners to pay for the cost of Douglas Boulevard from Garfield Park to Douglas Park. } *No. 121.*

This day comes the County Treasurer and ex-officio Collector of Cook County, Illinois, by his attorney, and said cause coming on regularly to be heard, and George W. Wilbur, attorney representing certain objectors herein, not appearing, after a hearing and on motion of Francis A. Riddle, attorney for the Board of West Chicago Park Commissioners,

It is ordered by the court that the objections of objectors represented by said George W. Wilbur to the foregoing application for judgment of sale be and are hereby overruled.

And thereupon, it is considered by the court that judgment be, and is hereby entered against the property of said objectors in favor of the People of the State of Illinois for the amount of special assessments, interest, penalties and costs due thereon.

It is further ordered that the property of said objectors be sold as the law directs to satisfy the amount of special assessments, interest, penalties and costs due thereon as aforesaid.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Philip Knopf, Clerk of the County Court of Cook County, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of order of court entered of record July 27, 1900, in a certain cause in said court in the matter of the application of Samuel B. Raymond, County Treasurer and ex-officio County Collector, for judgment on delinquent taxes and special assesssments for the year 1899 and prior years.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 24th day of September, 1900.

PHILIP KNOPF,

[SEAL] *Clerk.*

No. 201.
Def. of Certiorari for P. E. (or mo.)
Office Supreme Court, U.S.
FILED
OCT 1 1900
JAMES H. McKENNEY,
Clerk.

Gen. No. 17,839. Term No. 201.

Filed Oct. 1, 1900.

Supreme Court of the United States.

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of Illinois.

SUGGESTIONS IN RELATION TO RULE FOR DEFENDANTS IN ERROR TO SHOW CAUSE, ETC.

GEORGE W. WILBUR,
NEWTON A. PARTRIDGE,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Sentinel-Warren Printing Company, 42 Harrison St., Chicago.

22805

IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of Illinois.

SUGGESTIONS IN RELATION TO RULE FOR DEFENDANTS IN ERROR TO SHOW CAUSE, ETC.

MAY IT PLEASE THE COURT:

On the 14th of May last the plaintiffs in error presented a petition praying that a rule be entered against the defendants in error to show cause why they should not be punished for contempt in returning for collection the special assessment involved in said proceedings. On May 21st a rule was entered in accordance with the prayer of such petition. Since that time the defendants in error have taken certain actions in regard to such assessment, which to us seem to be an aggravation of the original offense. To sustain this contention, we present herewith the sworn statement of Mr. James L. Monaghan, one of the plaintiffs in error, which statement is supported by

numerous exhibits. The rule to show cause was duly served upon each member of the Board of West Chicago Park Commissioners. A certified copy of such order and the form of service thereof, is on file in the office of the clerk of this court.

We realize that the proceedings relating to the rule entered against the defendants in error, are somewhat unusual, and probably their actions therein, since the entry of the order, are without precedent. We deem it proper, therefore, to have their conduct, as set forth in the statement and exhibits, brought before your Honorable Court for such further action as the circumstances may warrant.

The proceedings instituted on behalf of the plaintiffs in error, and which resulted in the entry of said order, were forced upon the plaintiffs in error when the defendants in error refused to recognize the effect of the citation issued and served after filing the writ of error and the supersedeas bond. We had good reason to hope that, upon the entry of the order of May 21, the defendants in error would at once withdraw the assessment from collection, and thus save to the plaintiffs in error any further annoyance or expense in the premises. In this regard, however, we were disappointed and greatly surprised.

On the 26th of September we were served with a notice by counsel for defendants in error, to which was attached a copy of a motion. The motion, in effect, states that the defendants in error will move the court to vacate the supersedeas order granted upon the issuing of the writ of error in the case. The notice and motion were not accompanied by any showing either by affidavit

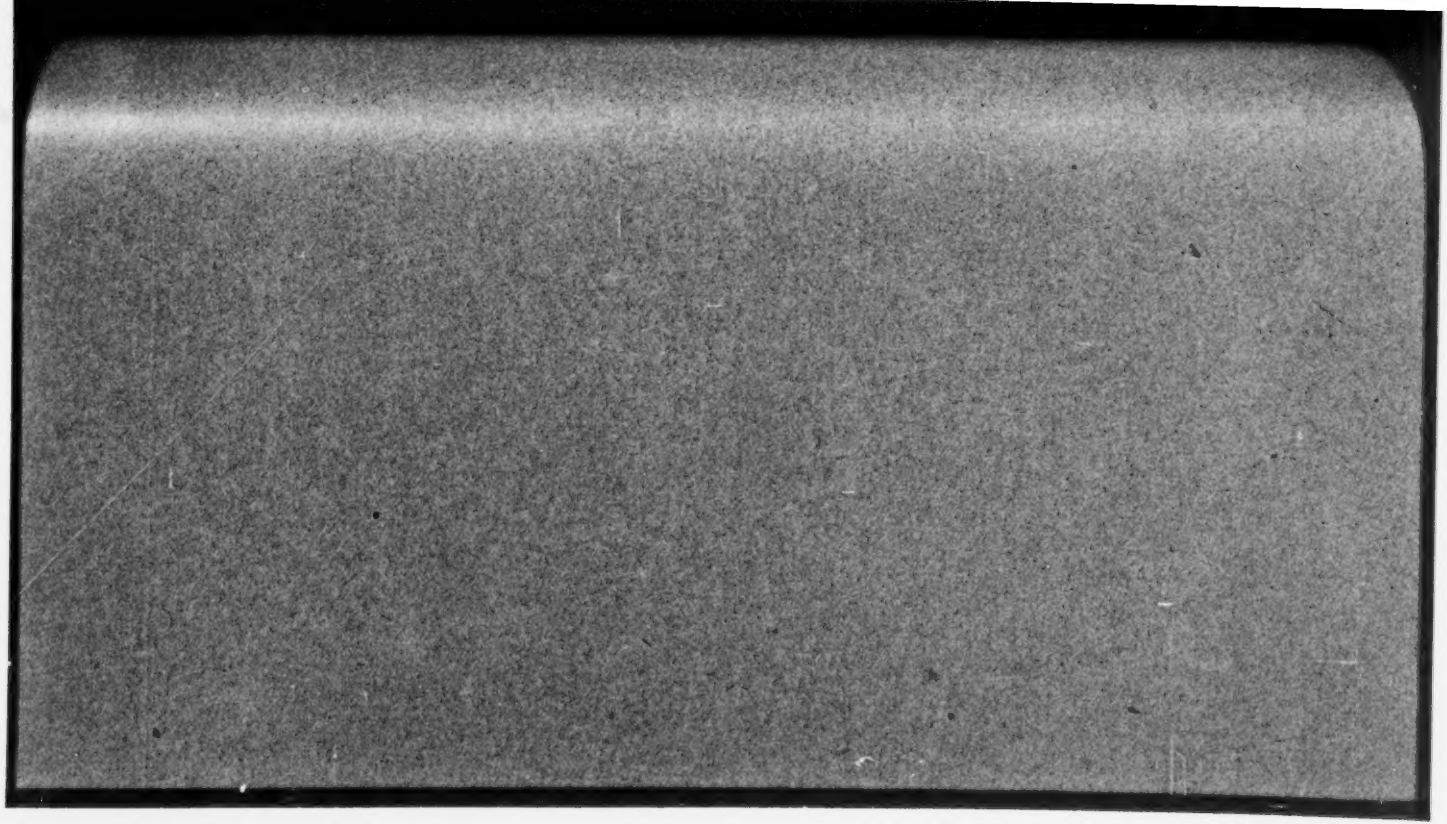
22806

or argument. We will, therefore, pass the matter by, simply stating that the action of counsel in presenting such a motion while a rule to show cause is still pending and undisposed of, seems open to criticism.

The services performed by counsel for plaintiffs in error in presenting the original petition for a rule to show cause, and also in the preparation and presentation of the statement and exhibits filed herewith, are matters outside of the scope of their original retainer. Much expense has been incurred for printing, for service of papers, and for transportation and incidentals involved in appearing before your Honorable Court, as above stated, and also in attendance on the day fixed for disposition of the rule. Counsel feel that these services and expenses should be borne by the defendants in error. We do not consider the sum of $1,500, mentioned in the sworn statement of Mr. James L. Monaghan, as the aggregate for such fees and expenses, to be excessive, when we take into consideration all of the circumstances disclosed by the record and files. The assessment against the property of the plaintiffs in error is upwards of $100,000.

Respectfully submitted.

GEORGE W. WILBUR,
NEWTON A. PARTRIDGE,
Counsel for Plaintiffs in Error.



No. 201.
Mot. to vacate re.
Mot. of Wilbur & Partridge for P. E.
Gen. No. 17,639. Term No. 201.
OCT 18 1900
JAMES H. McKENNEY, Clerk

Filed Oct 18, 1900.

Supreme Court of the United States.

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of State of Illinois.

REPLY ON BEHALF OF PLAINTIFFS IN ERROR TO THE MOTION OF DEFENDANTS IN ERROR "TO VACATE THE SUPERSEDEAS ORDER GRANTED UPON THE ISSUING OUT OF THE WRIT OF ERROR IN SAID CAUSE."

GEORGE W. WILBUR.
NEWTON A. PARTRIDGE.
ATTORNEYS FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22809

IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of State of Illinois.

REPLY ON BEHALF OF PLAINTIFFS IN ERROR TO THE MOTION OF DEFENDANTS IN ERROR "TO VACATE THE SUPERSEDEAS ORDER GRANTED UPON THE ISSUING OUT OF THE WRIT OF ERROR IN SAID CAUSE."

MAY IT PLEASE THE COURT:

On the 14th day of May last, the plaintiffs in error presented a petition herein asking that a rule be entered against the defendants in error to show cause why they should not be punished for contempt in returning the assessment involved herein for collection to the county treasurer of Cook County, after the service of the citation. Counsel for defendants in error filed a brief in reply to such petition and to the brief on behalf of plaintiffs in error. On the 21st day of May your Honorable Court

entered a rule against the defendants in error to show cause why they should not be punished for contempt, which rule was made returnable October 8, *instant*. On the return day defendants in error filed their answer to the rule. At the same time they made a motion as above set forth. The motion was allowed to be entered without prejudice.

The brief filed by the defendants in error in reply to petition for rule to show cause contains, substantially, the same authorities as are found in their brief in support of the present motion.

The record in this cause has not, as yet, been printed, but plaintiffs in error filed a short abstract thereof at the time of presenting the petition for rule to show cause. If the points involved in the motion turned upon a question of fact, then the court would be compelled to look into the record and make an examination thereof, without any suggestion from counsel for defendants in error, as to the parts of the record which tend to support the allegations in his brief.

The record herein, as will appear by the abstract thereof, heretofore filed on behalf of plaintiffs in error, shows a strict compliance with the requirements governing such proceedings. The presumption is also in favor of the regularity and sufficiency thereof. A supersedeas bond was approved and filed as a part of the record.

We will state, briefly, that the County Court of Cook County rendered a judgment in favor of defendants in error, and plaintiffs in error took an appeal to the Supreme Court of Illinois. On December 21, 1898, that court reversed the judgment of the County Court and remanded the cause. On February 9, 1899, a rehearing was allowed on petition of the defendants in error, and on

22870

October 13, 1899, the Supreme Court reversed its former findings and entered a judgment in favor of the defendants in error. The plaintiff in error then filed a petition for rehearing, and on November 22, 1899, a stay order was entered therein by the Chief Justice of the Supreme Court of Illinois. On December 11, 1899, the petition for rehearing was denied. The abstract of record heretofore filed shows briefly what steps were taken in suing out the writ of error.

BRIEF.

I

THE WRIT OF ERROR WAS SUED OUT IN APT TIME.

Counsel for defendants in error argues that the time for suing out the writ of error commenced to run from the 13th day of October, 1899, the day when the Supreme Court of Illlinois set aside its former opinion in favor of the plaintiffs in error.

This point is unquestionably settled by many authorities, and against the position of counsel.

A petition for rehearing was filed on behalf of the plaintiffs in error, under the rules of the Supreme Court of Illinois, asking that the opinion of October 13, 1899, finding against them, be reconsidered. A stay order was entered on such petition on November 22, 1899. On December 11, 1899, the petition for rehearing was denied. The time for suing out a writ of error commenced to run from the day of the denial of the petition for rehearing. This point is fully sustained in

The Aspen Mining & Smelting Co. et al., Appts., v. *Margaret Billings et al.*,

and

Same v. *Margaret Billings, James O. Wood et al.*, 150 U. S. 30 (36).

The rule is that if a motion or a petition for rehearing is made or presented in season and entertained by the court, the time limited for a writ of error or appeal does not begin to run until the motion or petition is disposed of. Until then the judgment or decree does not take final effect for the purposes of the writ of error or appeal. *Brockett* v. *Brockett*, 43 U. S., 2 How., 238, 239 (11: 251); *Texas & P. R. Co.* v. *Murphy*, 111

U. S., 488 (28: 492); *Memphis* v. *Brown*, 94 U. S., 715 (24: 244).

* * * * *

[36] In *Giant Powder Co.* v. *California Vigorit Powder Co.*, 5 Fed. Rep., 197, 6 Sawy., 508, it was said by Mr. Justice FIELD that equity rule 88 applies only where no petition is presented during the term, and the numerous cases in which it has been held that the time limited for an appeal does not begin to run until a petition for a rehearing properly presented has been disposed of, sustained that view. The decree does not, in legal effect, remain final while the petition is pending, and the prescription of rule 88 must be construed to mean that a rehearing cannot be granted after the lapse of the term unless application is made therefor during the term, and being entertained, the decree is thereby prevented from passing beyond the control of the court. The entertaining of the petition keeps the jurisdiction alive, and the granting of the rehearing may be made absolute, or denied, thereafter as the court may determine.

The same question is decided in the recent case of *Kingman & Company, Petitioner*, v. *Western Manufacturing Company*, 170 U. S., 675. On page 678–9 it is stated:

* * * The question here arose on a motion to vacate the supersedeas because the writ of error was not seasonably sued out within § 1007, Rev. Stat., sixty days having elapsed since the judgment was originally entered, and Mr. Chief Justice Waite, delivering the opinion of the court, said: "Under the ruling in *Brockett* v. *Brockett*, 43 U. S., 2 How., 241 [11: 252], the motion made during the term to set aside the judgment of March 2 suspended the operation of that judgment so that it did not take final effect for the purposes of a writ of error until May 20, when the motion was disposed of. In addition to this, the form of the entry of May 20 is equivalent to setting aside the judgment of March 2, and entering it anew as of that date. This the court had the right to do during the term, and for the very purpose of giving it effect for a supersedeas." No reference was made to

any distinction between a motion for a rehearing in a suit in equity and a motion for a new trial in an action at law. Indeed, § 1012 of the Revised Statutes provides that appeals "shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error," and if the limitation on taking an appeal does not begin to run until after the denial of a pending petition for rehearing in an equity suit, it would seem to follow that this must be so as to bringing a writ of error after the overruling of a motion for a new trial.

The subject was much considered by Judge McCrary in *Rutherford* v. *Penn Mutual Life Insurance Company*, 1 McCrary, 120, where he held that "a writ of error will operate as a supersedeas * * * if duly served 'within sixty days, Sundays excluded,' after a motion for a new trial has been overruled," and by Judge Sabin in *Brown* v. *Evans*, 18 Fed. Rep., 56, where the same conclusion was reached, and it was held that where a motion for a new trial had been made and entertained, the judgment in the case did not become final and effectual for purposes of review until the date of the order of court overruling such motion. And see *Alexander* v. *United States*, 15 U. S. App., 158, 169; *Scott's Administrator* v. *Stockton*, 41 U. S. App., 579; *Andrews* v. *Thum*, 33 U. S. App., 430.

The plaintiffs in error had sixty days from the 11th day of December, 1899, in which to sue out the writ of error. The writ was sued out on January 23, 1900, and citation was served on defendants in error on February 2, 1900.

The plaintiffs in error ask that the motion to vacate the supersedeas order be denied.

Respectfully submitted.

GEO. W. WILBUR,

NEWTON A. PARTRIDGE,

Counsel for Plaintiffs in Error.

No. 201.

F 22012
OCT 18 1900
JAMES H. McKENNEY,
Clerk

Reply Brief of Wilbur & Partridge, for P. in E.

Filed Oct. 18, 1900.

Supreme Court of the United States.

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of State of Illinois.

REPLY OF PLAINTIFFS IN ERROR TO ANSWERS OF DEFENDANTS IN ERROR TO RULE TO SHOW CAUSE WHY THEY SHOULD NOT BE PUNISHED FOR CONTEMPT.

GEORGE W. WILBUR.
NEWTON A. PARTRIDGE.
ATTORNEYS FOR PLAINTIFFS IN ERROR

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22814

IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

THE WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of State of Illinois.

REPLY OF PLAINTIFFS IN ERROR TO ANSWERS OF DEFENDANTS IN ERROR TO RULE TO SHOW CAUSE WHY THEY SHOULD NOT BE PUNISHED FOR CONTEMPT.

MAY IT PLEASE THE COURT:

Upon a casual examination of the answers of defendants in error, we stated to your Honors that we did not deem it necessary to make reply. After a further inspection, however, we think a misunderstanding may result unless certain inconsistencies in such answers are pointed out.

One page 5 of the answers, the defendants in error state that after the 2nd day of February, 1900, and after the service of citation, they took no action of any kind respecting the writ of error sued out in said cause, and have not at any time before or since the 2nd of February,

1900, made or caused to be made a return to the county treasurer of Cook County, Illinois, or any other officer authorized to receive state and county taxes, of the lots and lands which had been assessed for benefits by reason of the improvement of Douglas boulevard, and claimed to be owned by plaintiffs in error. This statement seems to be in direct conflict with what appears on page 6 of such answers, where it is stated that on February 2, 1900, when citation was served, they had an officer known and recognized, in the laws of Illinois, as collector of special assessments; that said collector had and now has authority to do and perform all lawful acts necessary under and consistent with the laws of said state, in the collection of all special assessments lawfully levied by respondents. Respondents show that on said day John I. Straw had been such collector for more than six months prior thereto, and is now collector of all special assessments lawfully levied by respondents.

The respondents evidently seek to put the whole responsibility of the return of the assessment for collection upon Straw, and they would have us conclude that the collector, appointed in the manner set forth in their answers, is entirely independent, and beyond their control. We do not believe this to be true.

On page 8 of the answers, respondents insert a copy of a notice, signed by one of the counsel for plaintiffs in error, stating that unless defendants in error withdraw from collection the special assessment for the improvement of Douglas boulevard, and cease all further effort to collect the same, in so far as it relates to lots of plaintiffs in error, proceedings will be commenced in the Supreme Court of the United States, and a rule will be asked against them to show cause why they should not be pun-

ished for contempt in violating the writ in said cause, and the statutes of the United States in such case made and provided. This notice bears date April 12th, 1900, or more than one month prior to the filing of the petition for the rule to show cause. The notice further discloses an effort on the part of the plaintiffs in error to avoid bringing the matter before your Honorable Court.

Respondents further say that this notice was the first information they received that the return of the lots of plaintiffs in error had been made to the county treasurer as delinquent for the non-payment of said assessment.

On page 9, respondents state that they did not withdraw, and did not, at that time, request the county treasurer to withdraw from collection said special assessment for the reason that they were advised by counsel that the writ sued out by plaintiffs in error did not operate as a supersedeas or suspend the right of the county treasurer to proceed with the collection of said assessment. Respondents show that after the rule had been entered they caused the withdrawal of all lots and lands of plaintiffs in error which had been returned by Straw, as collector, to said county treasurer as delinquent for the non-payment of said special assessment, from the application which had been made for judgment of sale thereof. This order was entered on July 26, 1900, or more than two months after the entry of the rule to show cause why they should not be punished.

On July 27, 1900, the day following the entry of the order last referred to, an order was entered in the County Court overruling the objections of plaintiffs in error, and a judgment of sale was taken against the property described in such objections. No exception is

made of the property described in the order of July 26. (Exhibit E, page 22, Abstract of Statement, etc.)

The respondents state in their several answers that they were acting under the advice of counsel in the matter and that they were advised, in effect, that the supersedeas order did not interfere with the collection of the special assessment involved herein. While counsel, prior to the 21st day of May, 1900, might have given such advice with the best of intentions and with an honest belief that it was in harmony with the law, yet, what excuse is there which can be consistently given either by the counsel or by respondents for advertising the property as delinquent, or permitting it to be done on the 15th day of June, 1900, nearly a month after the entry of the order to show cause, and also for allowing the assessment to remain on the collector's books until the 26th day of July, 1900? To us, the acts of counsel and the acts of the respondents after the 21st day of May, 1900, show not only a disregard of the order of that date, but an inexcusable ignorance of the authorities of your court. While the respondents may have leaned upon their counsel and may have been guided by his advice in regard to the notice served upon them on April 12, 1900, and also in regard to the preliminary proceedings which resulted in the entry of the order of May 21, they certainly were not justified in allowing such order to pass unnoticed until the 26th of July.

Counsel for defendants in error has attached his affidavit to the answers of respondents. We will allow this affidavit to pass without criticism, other than to say that the order of July 27, overruling the objections of plaintiffs in error, does not except their property therefrom, and as appears from the record presented herewith, there

is now a judgment of sale still appearing upon the record of the County Court against the property of the plaintiffs in error.

We do not feel that the respondents herein should be excused from all responsibility by reason of their actions, as set forth in the various documents presented herewith. Neither do we feel that the plaintiffs in error should be called upon to bear the burden of the uncalled-for expense that has been forced upon them by the respondents, even though their actions may have been prompted, in whole or in part, by advice of counsel. That such advice was not well given, is clearly shown by authorities appearing in our brief herein.

All of which is respectfully submitted.

GEO. W. WILBUR,
NEWTON A. PARTRIDGE,
Counsel for Plaintiffs in Error.



Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

No. 201.

Brf. of Wilbur for Pl. in Err.

Term No. 201. Gen. No. 17,639.

Filed Jan. 21, 1901.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of Illinois.

MOTION AND PETITION TO POSTPONE PREPARATION OF CAUSE FOR HEARING.

GEORGE W. WILBUR.
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.



22819

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,*	Error to the Supreme Court of Illinois.
vs.	
WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	

MOTION.

Now on this day come the above named plaintiffs in error, by George W. Wilbur, their counsel, and move the court to enter an order herein postponing the time for printing the record and for the preparation of said cause for hearing until after the disposition of *E. A. Cummings et al. v. West Chicago Park Commissioners*, being No. 160 of the October Calendar of this court. The principal grounds for this motion are that said two causes involve substantially the same issues, while *Cummings et al.* has a precedence on said calendar.

In support of said motion plaintiffs in error, by their counsel, present the verified petition of James L. Monaghan, with proof of service of notice of motion, together with service of copies of petition and motion upon counsel for defendants in error.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

22820

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* vs. WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to the Supreme Court of Illinois.

PETITION.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioner, James L. Monaghan, respectfully represents that he is one of the above named plaintiffs in error, and that he makes the following petition on behalf of all of said plaintiffs in error.

Your petitioner further represents that said cause was decided in the Supreme Court of the State of Illinois on October 13, 1899, in favor of the defendants in error, and that a rehearing thereof was denied the plaintiffs in error on December 7, 1899 (*Farrell et al.* v. *West Chicago Park Commissioners*, 182 Ill., 250); that said opinion, in its essential particulars, is based upon the decision of the Supreme Court of the State of Illinois rendered on October 13, 1899, in *E. A. Cummings*

et al. v. *West Chicago Park Commissioners*, 181 Ill., 136.

Your petitioner further represents that the subject matter of each of said causes is the same special assessment levied by the West Chicago Park Commissioners for the purpose of obtaining the cost of improving Douglas boulevard. Two separate appeals were taken from the judgment of confirmation entered in the County Court of Cook County, Illinois, to the Supreme Court of the State of Illinois, which appeals are entitled, respectively, as above. The Supreme Court of the State of Illinois, in each instance, upon a rehearing which was granted to the West Chicago Park Commissioners, affirmed the judgment of confirmation so entered by the County Court of Cook County. Separate writs of error were sued out of the Supreme Court of the United States to the Supreme Court of the State of Illinois, in each of said causes, and such writs are now pending and undetermined in this Honorable Court and are entitled, respectively, *E. A. Cummings et al.* v. *West Chicago Park Commissioners*, calendar No. 160, and *Farrell et al.* v. *Same*, calendar No. 201.

Your petitioner further represents that he is informed and believes that the case of *Cummings et al.* v. *West Chicago Park Commissioners* will be reached for disposition and argument during the latter part of the present month, or shortly thereafter, and prior to the time when the *Farrell* case should be reached. Your petitioner further states that he verily believes that the conclusions arrived at by your Honorable Court in the *Cummings* case will be decisive of the issues involved in the *Farrell* case, as the records in each are the same, except as to certain matters of evidence.

22821

Your petitioner further represents that the record in the *Farrell* case is quite voluminous, and that it has not as yet been printed, although the clerk of this court has notified counsel for plaintiffs in error in regard thereto.

Your petitioner further states that he verily believes the preparation and presentation of the *Farrell* case for hearing at the present time, will impose upon your Honorable Court a large amount of labor which may be avoided, for the reasons above stated, and it will also necessitate the expenditure of a considerable amount of money by the plaintiffs in error, which, possibly, may be saved to them.

Your petitioner, therefore, respectfully asks that the printing of the record and the presentation of *Farrell et al.* v. *West Chicago Park Commissioners* may be postponed, by the order and direction of your Honorable Court, until after the disposition of *Cummings et al.* v. *West Chicago Park Commissioners.*

All of which is respectfully submitted.

JAMES L. MONAGHAN.

GEO. W. WILBUR.
Counsel for Plaintiffs in Error.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

JAMES L. MONAGHAN, being first duly sworn, on oath deposes and says that he is one of the plaintiffs in error in the cause hereinabove firstly entitled, and that he has read and subscribed the foregoing petition; that he knows the contents thereof, and that the same is true in substance and in fact as he verily believes.

JAMES L. MONAGHAN.

Subscribed and sworn to before me this 18th day of January, 1901.

PHILIP KNOPF,

[SEAL.] *County Clerk, Cook County, Illinois.*

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Office Supreme Court U. S.
FILED
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Clerk.

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Filed March 13, 1901.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

[redacted], et al.,
Plaintiffs in Error,
vs.
[redacted],
Defendants in Error.

Error to Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR.

[redacted]
Counsel for Plaintiffs in Error.

22825

IN THE

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF COUNSEL FOR PLAINTIFFS IN ERROR

I.

STATEMENT OF FACTS.

MAY IT PLEASE THE COURT:

This is a special assessment proceeding brought by the town of West Chicago in 1893, for the purpose of obtaining the cost for improving Douglas boulevard, which extends from Douglas Park to Garfield Park. The original proceedings were confirmed as against the property of the plaintiffs in error herein in 1893. In 1895 separate writs of error were sued out by the plaintiffs in error herein from the supreme court of Illinois, and, upon a hearing thereof the supreme court adopted its decision theretofore rendered in the case of

Culver v. *The People*, 161 Ill., 89, and reversed the judgment of confirmation and remanded the causes for further proceedings.

The writs of error involving the property of the plaintiffs in error herein are known in the supreme court of Illinois as *Farrell et al.* v. *West Chicago Park Commissioners*, 162 Ill., 280; *Connor et al.* v. *Same*, 162 Ill., 287, and *White et al.* v. *Same*, 164 Ill., 196.

In the month of August, 1896, and prior to the entry of the remanding order above referred to, the defendants in error filed their petition in the county court for a new special assessment to pay for the cost of the improvement theretofore made under the proceedings which had been declared invalid as to the property of the plaintiffs in error, as above set forth.

Upon the motion entered on behalf of the plaintiffs in error herein, the petition in said cause lastly above referred to was dismissed out of said county court by reason of the previous decisions of the supreme court, declaring the original assessment to be invalid. An appeal was taken by the defendants in error herein to the supreme court, where the finding of the county court, in dismissing said petition, was reversed and the cause remanded. *West Chicago Park Commissioners* v. *Farber et al.*, 171 Ill., 146.

A retrial was had in said cause in the county court, which resulted in a verdict and judgment in favor of the defendants in error herein, and a confirmation of said assessment. An appeal was taken from such judgment to the supreme court of Illinois, and, on December 21, 1898, an order was entered in said supreme court setting aside said judgment and remanding said cause. On

228626

February 9, 1899, a rehearing was granted to the defendants in error herein. On October 13, 1899, said supreme court entered its order affirming the judgment of the county court. After the denial of a rehearing by the supreme court, the plaintiffs in error herein sued out a writ of error from this Honorable Court for a review of the action of the supreme court in confirming the judgment of the county court.

It will be seen from the above that the matter in controversy herein has been twice determined in the county court, once in favor of the plaintiffs in error and once in favor of the defendants in error; that it has been the subject of investigation and determination in the supreme court on four separate occasions two opinions being in favor of plaintiffs in error and two in favor of defendants in error. On the last appeal the supreme court first rendered its opinion for the plaintiffs in error, and upon a petition for rehearing, which was allowed, reversed its former opinion and gave one in favor of the defendants in error.

Without commenting upon the diversity of the conclusions of the courts before which this matter has been pending, we may state without fear of successful criticism that it seldom occurs that a single subject of litigation is determined in two different ways by the trial court, and in four different ways by the supreme court of a state, each subsequent decision overruling the prior one.

The proceedings for the original assessment under which the improvement was constructed are based upon an ordinance passed by the town of West Chicago on March 28, 1893. (Printed Rec., 25; Rec., 94.) The petition which was filed by the town of West Chicago,

in pursuance of said ordinance, appears on page 27 of printed record, and 97 of record. The ordinance was passed and petition filed under the provisions of an act of the legislature of Illinois, which was approved on May 2, 1873, and in force July 1, 1873.

An examination of the petition and ordinance referred to, and an inspection of the exhibits which appear after page 60 in the printed abstract, show that Douglas boulevard is 250 feet in width; that the center 130 feet thereof is designated as a lawn, while sixty feet on either side of such center lawn is to be used for boulevard purposes, forty feet on the north and east side being a macadam roadway, while forty feet on the south and west sides is an asphalt roadway. The outer borders of the boulevard contain side lawns twelve feet in width, and macadam sidewalks eight feet in width. It will be seen that the boulevard is, to all intents and purposes, a part of the park system, and that it forms a connecting link between the two parks named; that is, it is strictly a pleasure way from which all traffic, except pleasure vehicles, is prohibited.

Pursuant to the petition and ordinance above referred to, the county court, in accordance with the terms and requirements of the act of 1873, appointed commissioners to make an assessment against the property abutting upon said boulevard. An assessment was thereafter made and confirmed as to the property of plaintiffs in error, as previously stated. In the petition for an order of confirmation, it is alleged that the preliminary consenting petition for the making of said improvement, which consenting petition was required by said act of 1873, was obtained by said park board; that such consenting petition prayed for "the making and levying of a special

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assessment or special tax upon the property, lots and land contiguous to and abutting upon said boulevard so proposed to be improved for the purpose of paying the cost of said improvement, the costs and expenses of making, levying and collecting the same, and that the owners of a majority of the property so fronting or abutting on said boulevard had petitioned and requested said West Chicago park commissioners so being in the control and management of said boulevard, to make said improvement and to cause a special assessment or special tax to be levied on the property abutting on said boulevard for the purpose of paying the cost thereof. * * *''

The petition of the town of West Chicago, above referred to, recites, as the authority for such proceedings, said act of the legislature of Illinois, portions of which are herein set forth. Said act provides that, if such corporate authorities shall determine to make such improvement, they shall prescribe that the same shall be made by ''special assessment or special taxation on contiguous property.'' Said act also provides ''that no improvement or sewer shall be made or constructed under the provision of this section except upon the petition of the owners of a majority of the land fronting upon the proposed improvement or sewer.''

The foregoing references to the original petition for the improvement and the act under which such petition was filed, show that the entire cost of said improvement was to be charged upon the property abutting thereon and upon no other property; that no provision was made either in the ordinance or petition requiring a determination as to the particular and actual benefits which would accrue to any of the property from the proposed improvement.

The ordinance and the petition provide only that the entire cost of the improvement should be charged upon contiguous or abutting property, whether such property was benefited or not.

In the estimate of the cost of the improvement, which appears on page 32 of printed record, is a statement showing the frontage involved in the assessment to be 15,715 feet, and the amount per front foot, $16.59-4/10. While the amount of cost per front foot, as appears in the estimate, may be treated as surplusage, still it unquestionably shows that, in distributing the cost of the improvement upon the abutting property, the rate of $16.59 was cost fixed for each abutting foot, disregarding the depth of the lot, its situation in regard to the improvement and its fair value. In other words, the question of benefits, as to the respective pieces of property, could not have been considered. The proceedings as detailed in the ordinance and petition for the making of the improvement, simply require that the cost of the improvement should be distributed *pro rata* against the frontage at a fixed sum per front foot. We contend that an ordinance which provides that the entire cost of a proposed improvement shall be levied against abutting property, is in conflict with the established laws of the State of Illinois, and with the fourteenth amendment to the constitution of the United States, where there is no provision made in such ordinance to ascertain, in advance, that the total benefits to be derived by the respective pieces of land from such improvement would equal the amount of the assessment against the same.

The estimate which was made a part of the petition and proceedings under which the improvement was constructed, places the cost thereof at $260,783.85. The subsequent

228223

ordinance, and the one under consideration herein, fixes the cost of the improvement at $250,207.20. (Pr. Rec., 39.) The commissioners who estimated the cost to be charged against the property under the new proceedings, assessed against the district subject to the maintenance of parks under the control of the West Chicago park commissioners, $241.99, and the owners of abutting property were thereby relieved from the payment of the amount lastly set forth. It may be a digression to suggest that the West Chicago park commissioners, in determining that the entire district under their control would be benefited to the extent of $241.99 by reason of the construction of an improvement costing a quarter of a million dollars, were exceptionally conscientious in the performance of their duties in adjusting matters involving the expenditure of money between a class of property owners and the general public.

Many questions involved in the matter under consideration herein have been discussed at considerable length by counsel interested in the case of *Cummings* v. *West Chicago Park Commissioners*, which has been submitted, and is now pending before this Honorable Court. The *Cummings* case involves the same assessment as the one under consideration, the only difference being in the bill of exceptions and in certain objections and assignments of error presented by counsel for the respective parties interested in each of said cases. For this reason we will not burden the court with an extended comment on certain points involved herein. We trust, however, that the plaintiffs in error herein may have the same consideration on such matters as though such argument were made.

After the rendition of the opinions in the various cases involving the property of the plaintiffs in error herein, as

above set forth, an order was entered on March 12, 1897, in the county court of Cook county in pursuance of such remanding orders from the supreme court of Illinois, which order appears on page 43 of printed record. Said order contains, among other things, the following:

"And now again come said parties, by their said attorney, and move the court to enter an order herein in accordance with the opinion of said supreme court relating to the property hereinafter described, and the court being fully advised in the premises, it is ordered and adjudged that the judgment of confirmation in the matter of said special assessment, in so far as it relates to said property hereinafter described, be set aside and held for naught; and

It is further ordered and adjudged that all proceedings in the above-entitled matter, in so far as they relate to the property hereinafter described, be set aside and held for naught. It appears to the court that this court was without jurisdiction in the premises to enter an (any) order or to take proceedings at any time in said matter as to said property herein described.

The property hereinabove referred to, together with the names of the owners thereof, respectively, is described as follows, to wit:"

(Here follows descriptions of property of plaintiffs in error, although the same does not appear in the printed record.)

On page 34 of printed abstract is the following admission:

"Mr. Mecartney: It is conceded that the decision in the case of *People* v. *Culver*, 161 Ill., page 89, declaring an ordinance void in regard to Douglas boulevard special assessment, affects the ordinance which is offered and the proceedings in which this petition was filed, and related to this identical proceedings declared void."

The ordinance which is the basis of the proceedings un-

der consideration herein was passed July 14, 1896, and contains, among other things, the following provisions:

"* * * Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the county court of Cook county, on April 17th, A. D. 1893, for the levying of a special assessment for the cost of said improvement in pursuance of said ordinance, as case number 10,655 of said court, and

Whereas, the said boulevard improvement has been heretofore made and completed, and

Whereas, the said special assessment proceedings in said county court above mentioned, and the provisions of said ordinance for the payment of said improvement, have been heretofore and on the 28th day of March, A. D. 1896, declared void by the Supreme Court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for the special assessments have failed, and * * *" (Pr. Rec., 7.)

The ordinance from which the above quotation is taken was made a part of the petition upon which the assessment under consideration was made, and such petition contains substantially the same statement.

It will be seen from the above, that after the decision in the *Culver* case, declaring the ordinance of March 28, 1893, to be void, the town of West Chicago abandoned all further proceedings therein, as to the property of plaintiffs in error, as appears from the order of March 12, 1897.

In pursuance of said last mentioned ordinance, and in an attempted compliance with the act of 1895, a new estimate was made of the cost of said improvement, in which estimate is included the cost of the work already done, and the cost of making the special assessment provided for in such ordinance. The total of the estimate referred to is $250,207.20, which includes as public benefits $241.99.

The new assessment which was made in pursuance of

such ordinance and petition disregarded the original void assessment, and charged each lot with a portion of the cost of the improvement, and gave a credit for the amount that may have been paid under the original proceedings. The plaintiffs in error, in the various hearings of the matters in controversy herein since the original assessment was declared void, have always contended that the first proceedings, having been declared void by the supreme court of Illinois, there was no legal basis for the preceedings herein, and they further contend that such proceedings are in violation of the constitution of the United States, and in conflict with Sec. 10, ¶ 1 (first) thereof.

The plaintiffs in error also contend that the present proceedings are illegal and void because there was no valid ordinance as the basis of the proceedings under which the improvement was made; that a proceedings by special assessment for the purpose of collecting for the cost of an improvement, after its construction, by a prior and invalid ordinance, is contrary to the established laws of the State of Illinois; that the charge made against the property of plaintiffs in error, for such reasons, is made without due process of law, and in defiance of the provisions of the constitution of the United States, and of the fourteenth amendment thereof; that the ordinance under which said improvement was made having been declared void, such improvement was not authorized under the laws of the State of Illinois; that the present proceedings, being levied and made for the purpose of collecting for the cost of an improvement constructed under such circumstances, is also in conflict with the established laws of the State of Illinois, and with the provisions of the constitution of the United States, and

the fourteenth amendment thereof, as above referred to.

It is further contended that the only statute under which it is sought to collect for the cost of said improvement was adopted in 1895, and after said improvement had been constructed under a void ordinance. A judgment against the property of the plaintiffs in error for the cost of said improvement is, therefore, contrary to the established laws of the State of Illinois, and is also in conflict with said fourteenth amendment to the constitution of the United States.

It is also contended that the law which was approved June 24 and in force July 1, 1895, upon which it is sought to justify the present proceedings, is contrary to the constitution of the State of Illinois, and to the fourteenth amendment to the constitution of the United States, as above set forth.

II.

THE STATUTES OF ILLINOIS AND THE ORDINANCES RELIED ON HEREIN ARE AS FOLLOWS:

AN ACT in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments. (Approved May 2, 1873. In force July 1, 1873.)

27. CORPORATE AUTHORITIES MAY LEVY PARK TAX.] Section 1. That in any town which is now included within the limits of any city in this state in which a board of park commissioners shall now exist, having authority by law to acquire land and the appurtenances in trust for the inhabitants of such town, and of a division or part of such city, and for such parties or persons as may succeed to the rights of such inhabitants, and for the public as a public promenade and pleasure grounds and

ways, but not for any other use or purpose without the consent of the majority, by frontage, of the owners of the property fronting the same, and without the power to sell, alienate, mortgage or incumber the same, the corporate authorities of such town shall have the power to levy and collect annually a tax not exceeding two and one-half mills on the dollar of the taxable property in such town, according to the valuation of the same as made for the purpose of state and county taxation, to be used and expended by such park commissioners in governing, maintaining and improving such parks and boulevards, or pleasure ways, and paying other necessary and incidental expenses incurred in and about the management of such parks and boulevards. (As amended by act approved and in force May 31, 1879, L. 1879, p. 213; Legal News Ed., p. 163.)

29. PROCEEDINGS FOR PARK IMPROVEMENTS.] Sec. 3. In case such board of park commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, * * * they shall make plans and specifications for such contemplated improvement. * * * Such corporate authorities may upon the receipt of such plans, specifications and estimates, at their next meeting, whether the same be a regular or special meeting, or at any succeeding meeting, or at a special meeting called for that purpose, determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not; if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property: PROVIDED, that the tax authorized by section 1 of this act shall not exceed the sum of $100,000 annually. If such ordinance shall provide that such improvement shall be wholly or in part made by special assessments, they shall direct the supervisor of such town to file a petition in the name of the town, in the county court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement, and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner

prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition, shall, in all things, as near as may be, conform to the provisions of article nine (9) of an act of the General Assembly of this state, entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this act. The clerk of such town shall perform the duties and possess the powers which are conferred upon clerks of cities and villages under said article 9: PROVIDED, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer * * * (See Ch. 24, Sec. 604.)

30. WHO ARE CORPORATE AUTHORITIES?] Sec. 4. *Be it further enacted*, that the town supervisor, clerk and assessor of such town be and they are hereby designated and constituted the corporate authorities of such town, and they, or a majority of them, may levy the tax or any of the assessments herein authorized, in the manner and for the purposes herein provided, except in towns or villages which may have, or which shall hereafter become organized as a town or village, under any law of this state, in which case the board of trustees of such town, so organized as a village, may levy the tax, or any of the assessments herein authorized, in the manner and for the purposes herein authorized.

The ordinance under which said improvement was constructed contains the following provisions:

Section 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago park commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago park commissioners to the corporate authorities of the town of West Chicago, shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made

therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

Section 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law. (Pr. Rec., 26.))

The park act of 1895, under which this proceeding is being carried on, contains the following:

New Assessments.] Section 20. Where in any case such park board or park authorities having authority to improve any street or streets, or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment of said improvement by special assessment shall have failed or been declared void by any court of competent jurisdiction, then and in any such case, the said park commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement or completed portion thereof in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvement or the completed portion thereof shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases: *Provided*, that the provisions and all proceedings in respect to such new assessments shall relate to and be in force in all cases in which at the time of the passage of this act work has been completed or partially completed under any special assessment proceedings or attempted special assessment proceedings heretofore levied or collected, or attempted to be levied and collected by any such board of park commissioners or park authorities; *And, provided further*, that such new assessments in such cases shall be levied within seven years from the date of confirmation or attempted confirmation of such original proceedings.

Article 9, referred to in park act, contains in part the following:

Section 23:

"Upon the filing of such petition the court shall appoint three competent persons as commissioners."

Section 24:

"It shall be the duty of the commissioners * * * to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement; provided, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited."

Hurd's Ills. Stat. (1874), Chap. 24, Art. 9, p. 235.

Section 24 is the portion of the statute which relates to special assessments as distinguished from special taxes. The statute which is applicable to an ordinance providing for a special tax is as follows:

Section 17:

"When said ordinance, under which said local improvement shall be ordered, shall provide that such improvement shall be made by special taxation of contiguous property the same shall be levied, assessed and collected in the way provided in the section of this act providing for the mode of making, levying, assessing and collecting special assessments."

Subsequently changes were made in the latter section, but such was the law in 1893 and up to 1895.

Section 39:

"Upon the application for judgment upon such assessment, no defense or objection shall be made or heard which might have been interposed in the proceeding for the making of such assessment, or the application for the confirmation thereof."

Section 40:

"When said general officer (who receives the report of delinquency) shall receive the report provided for in the preceding section, he shall at once proceed to obtain judgments against said lots, parcels of land and property for said special assessments due and unpaid, * * * and shall in the same manner proceed to sell the same for the said special assessments, * * *"

The only provision of the constitution of Illinois upon the subject is set forth in a ~~previous~~ subsequent portion hereof.

III.

THE PROCEEDINGS HEREIN, WHICH SEEK TO CHARGE THE ENTIRE COST OF THE IMPROVEMENT UPON CONTIGUOUS AND ABUTTING PROPERTY, ARE ILLEGAL AND OPPRESSIVE.

The cost of the improvement which the defendants in error seek to obtain by the proceedings herein is fully described in the record. The ordinance, and all proceedings, show that the assessment is levied against abutting property. There is no designation as to the boundaries which shall be subject to this charge; that is, in making a frontage assessment, the depth of the property, or its extent, is not considered, so that the property with a shallow depth is assessed in the same amount per front foot as property of a greater area.

It is self-evident that an improvement of the character described in the proceedings herein is, to all intents and

purposes, a pleasure-way, and it can be used for no other purpose. It cannot be denied that the district tributary to the improvement receives large and lasting benefits by reason of the improvement—benefits which enhance the value of the property in its vicinity, although it is not assessed for and bears no part of the cost thereof. It seems to us that to impose the entire cost of such an improvement upon the owners of property touching the same is a great injustice, and for this reason the plaintiffs in error herein, being about eighty-five in number, and representing substantially $100,000 of the assessment, have persistently objected to the payment of this tax, and the matter is now presented to this court in the hope that they may be saved from the burden of paying the entire cost of a pleasure-way which is a benefit to the whole park district. As shown above, the entire amount charged against the park district for this improvement is only $241.99. Plaintiffs in error insist that this division by the park commissioners, who are the defendants in error herein, is unjust, unreasonable and oppressive.

For these reasons, among others, the plaintiffs in error contend that the proceedings of the courts of Illinois in regard to the matter in controversy herein, should not be sanctioned in this court, and to support their position, several legal propositions are presented herewith.

IV.

BRIEFS OF ARGUMENT AND POINTS.

[Under this heading we have adopted, substantially, the brief of Messrs. Wilson and McIlvaine in the *Cummings* case.]

1. As above stated, the improvement herein was constructed under an ordinance passed March 28, 1893, by the Town of West Chicago; and by a proceeding thereunder it was sought to charge the entire cost of the improvement against abutting and contiguous property. The original proceeding having failed, the defendants in error herein instituted a new assessment for the purpose of obtaining the cost of the improvement previously constructed, by imposing a charge therefor against abutting and contiguous property. This, as we contend, is in conflict with the constitution of the United States, and upon the motion of plaintiffs in error, the trial court should have dismissed such proceedings.

Lyon v. *Town of Tonnawanda*, 98 Fed. Rep., 361.

Norwood v. *Baker*, 172 U. S., 269.

2. Under the established laws of Illinois no valid assessment can be made and levied against private property for the purpose of obtaining the cost of an improvement, unless the construction of such improvement is preceded by a sufficient and valid ordinance providing for a special tax or a special assessment to charge the property affected thereby.

City of Carlisle v. *County of Clinton*, 140 Ill., 512.

Weld v. *People*, 149 Ill., 258.

East St. Louis v. *Albrecht*, 150 Ill., 506.

3. Art. 9, Sec. 9, of the constitution of Illinois, contains the following:

"The General Assembly may vest the corporate authorities of cities, towns and villages with power to *make* local improvements by special assessment, or by special taxation of contiguous property, or otherwise."

4. Chapter 24, article 9, section 1, is an follows:

"The corporate authorities of cities and villages are hereby vested with power *to make* local improvements by special assessment, or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe."

5. Under said constitution and the acts above mentioned, the manner of charging private property by special assessment and by special tax upon contiguous property are entirely different.

Kuchner v. *City of Freeport*, 143 Ill., 92.

6. The ordinance of March 28, 1893, which charges the entire cost of the improvement upon contiguous and abutting property, does not provide for a special assessment, but specifically provides for a special tax on contiguous and abutting property.

Special taxes are charged only upon abutting property, while special assessments are levied upon all property which receives a benefit by reason of the construction of the improvement. For this reason both the ordinance of March 28, 1893, and the ordinance for the present proceedings, provide for a special tax.

Hurd's Stat., Ill. (1899), Ch. 24, Art. 9, Sec 24.

The benefits from such proceedings and the limit to the charge on separate parcels of land are, therefore, disregarded. This was the fatal defect in the ordinance referred to in *Norwood* v. *Baker*, *supra*.

7. The ordinance of March 28, 1893, which was the only ordinance preceding the construction of the improvement, was wholly void as to its provision for a special assessment or special tax.

Culver v. *The People*, 161 Ill., 89.
Farrell v *Town West Chicago*, 162 Ill., 280.
White v. *Town West Chicoga*, 164 Ill., 196.
People v. *Eggers*, 164 Ill., 515.
Steenberg v. *The People*, 164 Ill., 478.
People v. *Lingle*, 165 Ill., 65.
People v. *Markley*, 166 Ill., 51.
O'Neil v. *People*, 166 Ill.. 565.
Walker v. *People*, 169 Ill., 474.

8. If construed not to be wholly void, then a petition based upon it, and addressed to the county court, asking the levy of a special assessment, would confer jurisdiction upon the county court, and its judgment would not be void.

Galena & C. U. R. R. Co. v. *Pound*, 22 Ill. 414.
Mulford v. *Stalzenback*, 46 Ill., 307.
Davis v. *City of Litchfield*, 155 Ill., 392.
Harvey v. *Tyler*, 2 Wall. (U. S.), 328.
Van Vleet on Collateral Attack, 82.

9. When the trial court and the supreme court of Illinois determined that the ordinance of March 28, 1893, was void, but nevertheless that it was a sufficient basis for a new special assessment or special tax for work previously done, it imposed upon the owners of property affected thereby a charge without due process of law.

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226.
Backus v. *Fort Street U. D. Co.*, 169 U. S., 559.

Castillo v. *McConnico*, 168 U. S., 674.
Williams v. *Mississippi*, 170 U. S., 213, 224.
Neal v. *Delaware*, 103 U. S., 370, 394.
Ex parte Virginia, 100 U. S., 339, 347.
Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 268.
Guthrie on 14th Amendment, p. 45.

10. An act of the legislature of Illinois, in force July 1, 1895, assuming to confer authority to pass a new ordinance for a special assessment, after the work had been done, so as to charge the cost of it on private property, is in conflict with the constitution of the United States.

City of St. Louis v. *Clemens*, 52 Mo., 133.
Brady v. *King*, 53 Cal., 44.
Cooley on Taxation, 1st Ed., p. 227.
Cooley on Const. Lim., 2nd Ed. (bottom page), 407, 420, 421.
Spencer v. *Merchant*, 125 U. S., 351.
New Orleans v. *Clark*, 95 U. S., 655.

IV.

WHAT, THEN, IS JURISDICTION?

(Adopted in part from brief of Messrs. Wilson and McIlvaine.)

The question of what constituted jurisdiction might be taken to be settled without citation of authorities. We understand that it consists in the right of a court to *enter at all* upon the consideration of the question presented to it.

Harvey v. *Tyler*, 2 Wall., 328.
Van Vleet on Collateral Attack, 82.
Board of Commissioners v. *Platt*, 79 Fed. Rep., 567.

The question what, as a matter of law, constitutes "jurisdiction" we take to be the same everywhere. The decisions of the courts of Illinois, both those above and below cited, are at least explicit on the subject. From them we extract the following propositions:

If the court, on the application to confirm the original assessment, had jurisdiction to *consider* the ordinance in that case, or the power to enter upon the subject at all, then its adjudication was not void. If it had no power to consider the petition in that case, or to determine whether the ordinance was good or bad, then its adjudication was void.

"They (the authorities) all agree that enough must appear either in the application or the order, or at least somewhere upon the face of the proceeding, to call upon the court to proceed to act; and all agree that when that does appear, then the court had properly acquired jurisdiction, or, in other words, is properly set to work. When the jurisdiction is thus established, and the court is authorized to hear, it follows as necessary consequence that it is authorized to adjudge, and that judgment being thus entered by authority of law, no matter how erroneous it may be, or even absurd—though it be made in palpable violation of the law itself, and manifestly against the evidence—is, nevertheless, binding upon all whom the law says shall be bound by it—that is, upon all parties and privies to it, until it is reversed in a regular proceeding for that purpose. While it remains a judgment it cannot be inquired into—nor its regularity questioned in any collateral proceeding."

Young v. *Lorain*, 11 Ill., 637.

"The rule is that enough must appear, either in the application or the order, or at least somewhere upon the face of the proceeding, to call upon the court to proceed to act, and when that does appear, then the court has properly acquired jurisdiction."

Mulford v. *Stalzenback*, 46 Ill., 307.

"When such an application was presented as required him (the judge) to act, then he acquired jurisdiction over the subject. He was then properly set to work. When jurisdiction is once shown to have attached, his authority to act was as complete as is the authority of the Circuit Court in any matter of which it has jurisdiction."

Galena & C. U. R. R. Co. v. *Pound*, 22 Ill., 414.

See, also,

Fitzgibbon v. *Lake*, 29 Ill., 177.

Reid v. *Morton*, 119 Ill., 131.

The foregoing doctrine as to what constitutes jurisdiction, applicable as well in special assessment cases as in others, is established in Illinois and not disputed. In the present case it is not denied that all the elements of a sufficient petition for a special assessment were contained in that presented to the court in 1893, *except one*. The statute required the petition to "recite the ordinance." It did recite that of March 28, 1893. If that ordinance *had any validity whatever*, so as to permit the court to enter upon a consideration of petitioner's rights under it, manifestly the order entered thereon would not be void, however erroneous.

Inasmuch as the statutes of Illinois have always authorized the levy of a special assessment in one installment, even in cases where it might, at the option of the municipality, have been divided into many, the provision of section 1 of the ordinance of March 28, 1893, would have conferred jurisdiction upon the county court to consider the petition, *if that section also had not been void.*

Keeler v. *The People*, 160 Ill., 179.

In that case the ordinance did not provide for a division of the assessment into installments, but the judgment separated it into five equal parts, and also made confirmation of the total. This was held the equivalent of a judgment in a single installment; the attempted division being incomplete, as not specifying when the installments were payable, and being disregarded. If, in the present case, the provision *for installments only* was void, then there remained a provision in the ordinance for *one* installment, as in the Keeler case. Even more clearly, for in this ordinance the second section only contained the provision dividing the total into installments, and if, as is now claimed, this was the only defect, section 1 would have been sufficient to sustain the court's jurisdiction. There was in this case an order confirming the total, as in the Keeler case.

In *Clark* v. *People*, 146 Ill., 350, it was said:

"It is the general rule that where the court has jurisdiction of the parties and subject-matter in a particular case, its judgment * * * is conclusive, and is not open to collateral impeachment by the parties thereto or their privies. * * * This rule has been applied by this court to judgments confirming special assessments so frequently that it is unnecessary for us to do more than cite the cases where such application has been made." (Citing eleven cases.)

The result is that the Culver case could not have been so decided if the first section of the ordinance of March 28, 1893, had not been void, as well as the second. By that decision the first section falls with the second.

The necessary effect, therefore, of the decision of the supreme court of Illinois in *Culver* v. *The People*, was to wipe out and extinguish every provision of the ordinance of March 28, 1893, for the levying of *any* special

22857

assessment or special tax. If there was anything left of it whatever, as a basis for a charge upon private property, the decision of *Culver* v. *The People* could not have been rendered.

This was the doctrine held by the Illinois court in *O'Neil* v. *People*, 166 Ill., 565, where the court said, referring to the Culver case:

"The rule is, that the ordinance can be attacked (on application for judgment) *on the ground it is void, but on this ground only*, for if the ordinance is void the court, in the assessment proceeding, had no jurisdiction, and all the proceedings based upon the ordinance are consequently void. Thus the question of the validity of the ordinance is a jurisdictional one, and may properly be raised in this proceeding."

The Culver case become the law of the State of Illinois, as the consideration of that ordinance was specifically before the court, and so the law stood when this proceeding was begun.

When, therefore, the new assessment against the property of these plaintiffs in error was levied in 1896, after the work had been completed, under a new ordinance providing for a special assessment, the situation was precisely one which, by the frequent decisions of the supreme court of that state, neither created nor permitted any charge against private property.

East St. Louis v. *Albrecht*, 150 Ill., 506.
Weld v. *People*, 149 Ill., 258.

Under those conditions, if the settled and established law of Illinois had been applied to the case of these plaintiffs in error, no such charge against their property could have been sustained. The motion of the plaintiffs in error to dismiss the proceedings should have been allowed.

V.

THE ORDINANCE OF MARCH 28, 1893, UNDER WHICH THE IMPROVEMENT WAS CONSTRUCTED, WAS VOID.

1. Such ordinance was void because it attempted to charge against abutting property the entire cost of the work provided to be done thereunder, without regard to the benefits.

Section 1 of the ordinance provides that the cost of the improvement, together with the cost of making and collecting the assessment, shall be paid by special assessment upon contiguous property abutting on said boulevard. (Pr. Rec., 26.) This was the only provision contained in the ordinance for the payment of any part of the cost of said improvement; neither does it provide for any inquiry into the question as to whether or not the abutting pieces of property will be benefited to the extent of the charge made against the same. This portion of the ordinance undoubtedly means that the entire cost of the work shall be paid for by the owners of abutting property. The expression, "by special assessment upon the abutting property," means nothing less than that in distributing the amount of the assessment upon the various pieces of abutting property the apportionment shall be by special assessment; that is, that such amount shall be distributed in proportion to the benefits derived from the assessment; that the assessment, however, was not so distributed can be reasonably inferred by an inspection of the original estimate, which appears on page 32 of printed record, where it is stated: "Amount per front foot, $16.59 4/10 +." The commissioners who were to make the assessment were required to confine the same strictly to such "contiguous property abutting on the boulevard."

Under the laws of Illinois it seems to us that it would be a very difficult undertaking to charge a *special assessment* for the making of an improvement upon contiguous and abutting property. In the case under consideration an estimate of the cost of the impromont was made, and commissioners were directed to assess such amount against abutting property. Unless all property was equally benefited then the amount to be raised by the assessment would be distributed unequally against abutting property, but in proportion to the benefits which each piece would receive by reason of the construction of the improvement.

As stated above, the ordinance and estimate herein are in conflict with any conclusion other than that the assessment was levied in a uniform amount and in accordance with the frontage, without regard to benefits, or to the value of the property assessed. The ordinance provides that the entire cost of the improvement shall be charged upon contiguous and abutting property, while it makes no provision in respect to actual benefits to be derived therefrom. Such an ordinance is forbidden by the constitution of the United States..

In *Norwood* v. *Baker*, 172 U. S., 269, this doctrine was established in this court. In that case the ordinance before the court provided that:

"The cost and expense of the condemnation of the property, including the compensation paid to the owners, the cost of the condemnation proceedings, the cost of advertising, and all other costs, and the interest on bonds issued, if any, should be assessed per front foot upon the property bounding and abutting on that part of Ivanhoe avenue as condemned and appropriated herein."

An assessment was made for the cost of said improvement, and charged on the abutting property, in accord-

anse with the said ordinance. In that case this court said, page 278:

"Undoubtedly abutting owners may be subjected to special assessments, to meet the expence of opening public highways in front of the property—such assessments, according to the well-established principles, resting upon the ground that special burdens may be imposed for special or peculiar benefits accruing from public improvement, * * * but the power of the legislature in these matters is not unlimited. * * * As already indicated, the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and, therefore, the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired if it were established as a rule of constitutional law that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner from such improvement, could not be questioned by him in the courts of the country."

And on page 290 the court said:

"The corporation" (the Village of Norwood) "manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not, to the extent of such cost."

In that case the collection of the entire assessment, as to the complainant in the case, was enjoined, and the judgment affirmed in this court

"upon the ground that the assessment against the plaintiffs' abutting property was under a rule which excluded any inquiry as to special benefits, and the necessary operation of which was, to the extent of the excess of the cost of opening the street in question over any special benefits accruing to the abutting property therefrom, to take private property for public use without compensation." (Page 297.)

If the views expressed in the foregoing opinion are held to be applicable here, then it may follow that there never was a valid ordinance for the present assessment. Under such circumstances the result would be that it is, by the established laws of Illinois, and by the rulings of this court, illegal.

2. The state courts have held that the original ordinance was void, and in the *Culver* case, which was a collateral proceeding, it was held that an adjudication, based upon such ordinance, was without jurisdiction for that reason alone.

The motion of the plaintiffs in error to dismiss the proceedings should, therefore, have been allowed.

The ordinance is shown herein to have been declared void, and it is conceded so to be by the ordinance and petition which is the basis of the proceedings herein, and by the admission of counsel appearing upon the record and referred to in another portion hereof.

It may not be an easy task to logically reconcile the numerous opinions of the supreme court of Illinois in which the ordinance was held to be void with the opinion subsequently rendered in which the same ordinance was, in effect, declared to be not *wholly void*. The language of the supreme court in the opinion which is now under consideration does not amount, as we contend, to a *construction* of the ordinance, for that was settled in the cases where the matter was first passed upon by that court. The position of the supreme court of Illinois herein appears to be rather a refusal to apply the local laws to the case of the plaintiffs in error, a right which is guaranteed to them by the constitition of the United States.

When th is proceeding was begun, the law being that the ordinance was void, and the court having so decided, its later decisions in terms to the contrary will not be conclusive upon this court.

Thompson v. *Perrine*, 103 U. S., 816.

VI.

UNDER THE LAWS OF ILLINOIS NO ASSESSMENT CAN BE MADE FOR A LOCAL IMPROVEMENT UNLESS, WHEN THE WORK WAS DONE, A VALID ORDINANCE WAS IN EXISTENCE, REQUIRING THE COST THEREOF TO BE PAID BY SPECIAL ASSESSMENT.

(Under this heading we have also adopted, substantially, the brief of Messrs. Wilson and McIlvaine.)

Under the constitution and laws of Illinois, as uniformly construed by the supreme court, no charge by way of special assessment or special tax can be lawfully made against property for work which has been previously done, unless *preceding the work* there was a valid ordinance therefor in which provision was made to charge the cost against such property by special assessment or special tax. From this proposition there has been no departure in the courts of Illinois. The constitution of Illinois provides:

"The General Assembly may vest the corporate authorities of cities, towns and villages with power to *make* local improvements by special assessment," etc. (Art. 9, Sec. 9, Hurd's Stat., 1899, p. 68.)

This was the exact language of the first section of article 9 of the city and village act (Hurd's Stat., Ills., 1899, Chap. 24, p. 362), and the supreme court has held that the two are to be construed alike, the statute giving no

authority which is not conferred by this provision of the constitution.

Falch v. *People*, 99 Ill., 137.

The first section of the park act of July 1, 1895, (Hurd's Stat. Ills., 1899, Ch. 105, p. 1242), provides that:

"Any board of park commissioners or park authorities * * * are hereby vested with power and authority *to levy*, assess and collect *special assessments* * * * *for the purpose of improving any boulevard*," etc., etc.

All of these provisions have been construed to mean the same thing, that is, that the improvement must be made by special assessment, and such assessment must be provided for by the municipality in some lawful way before the improvement is laid down. The supreme court of Illinois has so determined in

East St. Louis v. *Albrecht*, 150 Ill., 506.

Weld v. *People*, 149 Ill., 258.

City of Carlisle v. *County of Clinton*, 140 Ill., 512.

and as to the park officers, in

West Chicago Park Commissioners v. *Sweet*, 167 Ill., 332.

Section 18 of article 9, city and village act (Hurd's Stat. Ill., 1899, Ch. 24, p. 362), contains the following provision:

"When any such city shall by ordinance provide for the making of any local improvement it shall, *by the same ordinance*, prescribe whether the same shall be made by special assessment, or by special taxation of contiguous property, or general taxation, or both."

The park act of 1873, under which the original ordinance was passed (Hurd's Stat. Ill., 1899, Ch. 105, p. 1213), contains the following:

"Such corporate authorities (the township officers, on application of the park commissioners), may * * * determine by ordinance * * * whether such improvement shall be made or not; if they shall determine to make the same they shall also prescribe that the same shall be made by special assessment, or special taxation of contiguous property."

The park act of 1895 contains the same provision as article 9 of the city and village act, above quoted.

Under the constitution, and by every statute under which the assessment can be levied, it is required that the ordinance which provides for the work shall also provide for the assessment.

The test as to the validity of the present assessment is not, therefore, the continued existence of an ordinance describing the improvement to be made, but the continued existence of such an ordinance, coupled with legislation requiring the work to be paid for by special assessment. This is the plain meaning of the constitution and of the statutes above cited, all of which provide that municipal corporations may make local improvements by special assessment or special tax on abutting property.

In the opinion of the supreme court of Illinios in the case of *Cummings* v. *West Chicago Park Commissioners*, 181 Ill., 136, and which is adopted as a part of the opinion under consideration herein, it is stated (137):

"The constitution and the statutes provide for making local improvements by special assessment, and we have uniformly held that they confer no authority to make a local improvement upon some other plan, or without any provision for a special assessment, and afterward provide for payment by such assessment. The improvement *is to be made by* special assessment, and consequently there must be a provision for its payment by that method *when it is made*. The liability to a special assessment

22841

must be created by the ordinance which provides for making the improvement, and such a liability is created by a provision of the ordinance that the cost of the improvement shall be paid by special assessment."

The first step, therefore, to create a charge for an assessment under the laws of Illinois, is the passage of such an ordinance as is designated above. If the ordinance of March 28, 1893, did not contain "a valid provision for a special assessment, or special tax, on abutting property" to pay for the improvement, then the present assessment and the proceedings therefor, which were begun after the improvement had been made, are without authority of law.

After the passage of the ordinance, the next step is an application to the county court by petition, reciting the ordinance for levying a special assessment or a special tax, and praying for a confirmation of such charge. Upon such petition, commissioners are appointed by the court for the purpose of making an assessment roll. Notices are then to be mailed and published, and where no objections are filed, the assessment is confirmed by default.

In case the amount of the assessment is not paid, steps are then taken to enforce the collection by sale. On this application no questions can be raised which would have been proper subject of defense on the application for confirmation.

Culver v. *The People*, 161 Ill., 89, is an appeal from a judgment of sale for an installment of the original boulevard assessment. The opinion in this case is the first one of a number rendered by the supreme court of Illinois in which the proceedings of 1893 were declared to be void. As the question of the validity of the ordinance was a

matter which could and should have been raised on the application for judgment of confirmation, the supreme court could not have considered the question on an appeal from a judgment of sale, unless the court entering the judgment of confirmation was without jurisdiction. The court held that the ordinance was void, and as a valid ordinance was necessary in order to give jurisdiction in the first instance, the judgment of sale was set aside.

In the *Culver* case, on page 100, is found the following:

"Where, however, the ordinance is void, all the proceedings based upon it, including the judgment of confirmation, must be void also. This necessarily results from the rule that a valid ordinance lies at the basis of every valid assessment. * * * So, here, this ordinance, which authorized an assessment payable in installments, and directs the deferred installments to draw annual interest, is invalid and consequently the judgment, confirming the special assessment for improving Douglas boulevard, was not authorized.

(Page 99.) "Where an assessment is claimed to be illegal from the fact that it was based upon an insufficient ordinance, the objection to the ordinance as being insufficient must be made upon the application to confirm the assessment, and if it is not made then, the judgment of confirmation will be regarded as conclusive when called in question collaterally. * * * But we apprehend that the objections to the ordinance, which are waived when not presented upon the application for a confirmation of the assessment, are those which show that the ordinance is insufficient in the sense of being irregular, or that it is insufficient for some reason which does not establish its invalidity or void character."

There are many other cases decided by the supreme court of Illinois on the same line, and the citation of such authorities herein is probably unnecessary. The decisions are found, however, in

People v. *Eggers*, 164 Ill., 515.

Steenberg v. *The People*, 164 Ill., 478.
The People v. *Lingle*, 165 Ill., 65.
People v. *Markely*, 166 Ill., 51.
O'Neil v. *The People*, 166 Ill., 565.
Walker v. *The People*, 169 Ill., 474.

As stated in the "Statement" herein, the *Culver* case was adopted by the supreme court in the following:

Cook v. *People*, 161 Ill., 209.
Farrell v. *Town of West Chicago*, 162 Ill., 280.
Connors v. *Same*, 162 Ill., 287.
White v. *Same*, 164 Ill., 196.

The three latter cases were writs of error. The only theory upon which to justify the finding in the *Culver* case is that the ordinance was wholly void, and that it conferred no authority and no jurisdiction upon the county court to take any proceedings.

In the order of March 12, 1897, hereinabove referred to, it is stated:

"It appears to the court that this court was without jurisdiction in the premises to enter an order or to take any proceedings at any time in said matter as to the property herein described." (Printed record, 43.)

The supreme court of Illinois, however, decided that the original ordinance was void, so that the county court had no jurisdiction to entertain or consider a petition based upon it, and also that it was valid so as to provide sufficiently for a new special assessment and to justify a subsequent proceeding to charge the property of plaintiffs in error with the cost of the improvement after its completion.

It cannot be contended that the laws of Illinois provide that an ordinance for an assessment, in form like the

present, should be deemed void so as to confer no jurisdiction on the court to consider it, and at the same time that it should be deemed valid so as to authorize a subsequent assessment for an improvement already made. This is precisely the position of the plaintiffs in error herein. They successfully contested the original proceedings and procured a determination by the Supreme Court of Illinois to the effect that that ordinance under which the improvement was constructed was void. This, under the established laws of Illinois, as we contend, should have been a bar to any further proceedings which might be instituted for the purpose of collecting for the cost of the improvement. The Supreme Court, however, in its subsequent decision found that the ordinance was not *wholly void*. If that court had come to the same conclusion in the prior proceedings, then plaintiffs in error herein would have been saved some rights and would have been able to interpose certain defenses to the original proceeding, which it is sought to deprive them of in the present instance.

We contend herein that the judgment of the Supreme Court of Illinois imposes upon the plaintiffs in error a heavy burden, and in defiance of the provisions of the fourteenth amendment as aforesaid.

VII.

THE COURTS OF ILLINOIS HAVE APPLIED A RULE TO PLAINTIFFS IN ERROR THE EFFECT OF WHICH IS TO CHARGE THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

(We have adopted, partially, the brief of Messrs. Wilson and McIlvaine under this head.)

We are not complaining in the present proceedings that

22843

the law of Illinois was not applied to the case of these plaintiffs in error, but that their property is sought to be charged herein to a large extent contrary to law, and without right, by the constituted authorities of the State of Illinois, and that this contravenes the 14th amendment to the constitution of the United States.

It is established in this court that the provisions of the 14th amendment to the constitution are a guaranty, not merely against a *statute* of a state in contravention thereof, but against a misapplication, *by the courts of any state*, of the local laws, although on their face not unjust or unreasonable, so as to produce the same oppressive effect as if done by statute.

As we understand the rule, if the judicial authorities of the state deny any litigant the equal protection of the laws, or by judgments charge him or his property, without due process of law, it is as much the act of the state as if done by the legislature.

C., B. & Q. R. R. Co. v. *City of Chicago*, 166 U. S., 228.

Backus v. *Fort. St. U. D. Co.*, 169 U. S., 559.

Costillo v. *McConnico*, 168 U. S., 674.

Williams v. *Mississippi*, 170 U. S., 213, 224.

Neal v. *Delaware*, 103 U. S., 370, 394.

Exparte Virginia, 100 U. S., 339, 347.

Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 268.

Guthrie on 14th Amend., 45.

The fundamental law of Illinois, as construed by its courts, denies public corporations any right to levy a

special assessment to pay for a local improvement *after it is made.* This we have shown above, and this proposition, we apprehend, is undisputed.

East St. Louis v. *Albrecht*, 150 Ill., 506.
City of Carlisle v. *County of Clinton*, 140 Ill., 512.
Weld v. *People*, 149 Ill., 258.

The question before the trial court and the Supreme Court of Illinois was, on this point, whether or not the ordinance of March 28, 1893, which was the only prior authority for making the said improvement, contained valid provision for *any* special assessment; it was the contention of the plaintiffs in error that it did not, and, if not, the *whole assessment* was without lawful authority and void.

Considering the two questions decided by the state court together, the Federal question is, whether the use of one to head off a defense under the other is not denying a citizen his "due process of law." And, to determine this, the court will not assume that the decision of the two several questions involved was correct, even if, in their nature, both local. Nor, in considering them separately, is there any such presumption where the contention is that the local law was misapplied.

Guthrie, in his work on the 14th Amendment, page 45, says:

"The rule as to accepting the interpretation of the state court is not universal. It does not strictly apply to the effect and operation of state statutes. The Supreme Court may decline to concur in the view of the state court as to the real effect and operation of a state statute or ordinance, and its necessary tendency."

And he cites on this point:

Soon Hing v. *Crowley*, 113 U. S., 703, 710.

Yick Wo v. *Hopkins*, 118 U. S., 356, 366.

R. R. and Telephone Cos. v. *Board of Equalizers*, 85 Fed. Rep., 302, 317.

The same author, on page 73, says:

"Ordinarily the Supreme Court will not attempt to review and correct the errors of state tribunals in the general administration of the local laws, but if a law or ordinance be systematically administered so as to violate the 14th amendment the court will interfere." Citing:

Henderson v. *Mayor of N. Y.*, 92 U. S., 259, 273.

Chy. Lung v. *Freeman*, 92 U. S., 275, 279.

Neal v. *Delaware*, 103 U. S., 370.

Soon Hing v. *Crowley*, 113 U. S., 703, 710.

Arrowsmith v. *Harmoning*, 118 U. S., 194, 196.

Yick Wo v. *Hopkins*, 118 U. S., 356, 373.

Williams v. *Mississippi*, 170 U. S., 213, 225.

These then are, thus far,

THE FEDERAL QUESTIONS.

The courts of Illinois having held that the ordinance of March 28, 1893, was *void* so as to confer on the county court no power to consider an assessment levied under it ought to have held accordingly that the present proceeding was invalid. Their refusal to do so had the

effect to charge the property of plaintiffs in error without due process of law.

The first of the questions so involved, viz: the validity of the ordinance, was originally local, and this court will follow on that point the decisions of the local courts, as they were when the question arose, but will not permit them to refuse a citizen the benefit of the law thus ascertained.

See

Thompson v. *Perrine*, 103 U. S., 816,

where this court refused to follow the latest decision of the state court, departing from its former rulings after the rights of the parties arose.

In *Anderson* v. *Santa Anna*, 116 U. S., 361, on a case where the Supreme Court of Illinois had departed from a line of decisions after the question at issue arose, this court said:

"If, according to the law of Illinois, as declared by its highest court at the time the bonds in suit were issued, the act of February 28, 1867, was a valid exercise of legislative powers, the rights of purchasers or holders could not be affected by a subsequent change of decision."

The same doctrine was applied to previous statutes as construed by the local courts at the time the right (or conversely the demand) arose in *Douglass* v. *County of Pike*, 101 U. S., 677, cited in the Santa Anna case.

The second and third of said questions are not of local law, or only partially so; but if they were wholly so this court would still inquire whether the decision on these points was a departure from the rules which prevailed when these proceedings were begun; and also whether they were a fair application to this case of the local laws as usually construed.

22845

The most vital principle in each of these propositions, as Federal questions, is the *misapplication* by the state court of its established rules of law, or its departure from principles theretofore settled, so as to deny the benefits thereof to plaintiffs in error as effectively as if it were done by command of the legislature.

The decision complained of is also in conflict with the first clause of the fourteenth amendment in that it discriminates against the litigants in this case and denies to them rights which are conceded to litigants in general.

VIII.

THE PARK ACT OF 1895, IF IT BEARS UPON THE CASE UNDER CONSIDERATION, IS IN CONFLICT WITH THE FOURTEENTH AMENDMENT.

The twentieth section of the act approved June 24, 1895, and in force July 1, 1895, entitled "An Act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," is the only statutory authority for a new proceeding to be begun and prosecuted after the improvement has been completed.

Said section 20 is set forth in full herein.

It is recited in the petition for the present improvement that the new ordinance, which is the basis of the present preceeding, rests upon the authority of said section. It is recited also that the previous proceedings had been "declared void by a court of competent jurisdiction," and set aside by order of court.

Prior to the passage of said act, in 1895, *after said work had been completed*, there was no statute which

authorized a new assessment for such an improvement, under these conditions. The "city and village act" then in force contained such a provision, but had no application to parks or park boards, or town authorities. The main ground of the decision in *Culver* v. *The People*, 161 Ill., 89, was that the provision of the city and village act, authorizing a division of assessments into installments, had no application to assessments by park boards.

Such then was the condition on July 1, 1895, that a previous proceeding to charge this property for the said improvement had been "declared void"; that the work had been completed; that no law existed under which a new assessment could be made. Thereupon the legislature passed the law in question, assuming to create a right to charge the property of plaintiffs in error for previous work.

The provision of this act of 1895 authorizing an assessment for work previously done was, we submit, contrary to the fourteenth amendment. Under the constitution and laws of Illinois, no property could be charged for the cost of an improvement except in pursuance of a right which existed *before the work was done.*

No municipal act done without statutory authority can impose an obligation or duty.

Marsh v. *Chesnut*, 14 Ill., 223.
Billings v. *Detten*, 15 Ill., 218.
Conway v. *Cable*, 37 Ill., 32.
Anderson v. *Santa Anna*, 116 U. S., 360.

And no such void imposition could be made good afterwards, so that a mere remedy provided later could vitalize it *ab initio.* The ordinance is only one step in a series of proceedings which must depend upon statutory

22846

authority, and the existence of the ordinance without the statute does not charge the property nor have any effect whatever thereon. Without the new power conferred by this act the Park Board could never have acquired a right to sell the property of plaintiffs in error for this improvement, and this is an essential element of the obligation.

In Missouri a state of facts like the present arose. Proceedings were taken to levy a special assessment. Pursuant to this the work was done, and the contractor, according to the procedure in that state, undertook to collect the money, but the proceedings were found defective. Afterward the legislature, by a new statute, conferred power to make a re-assessment, which was done. In *City of St. Louis* v. *Clemens*, 52 Mo., 133, the validity of the new act was in question, and the court said:

"The City of St. Louis, under the law as it stood when the contract was made and the work done for which the assessment was made for which this suit is brought, could only authorize the making of improvements of the kind in question so as to charge the adjoining property with the cost thereof by a compliance with the requirements of her charter. This was not done in this case, so that the doing of the work by the contractor created no obligation on the part of the appellant to pay therefor, nor did it create any lien on the property of the appellant to secure the payment of the cost of the work, nor did it create any right in favor of the contractor to demand or recover the same from either the defendant or his property, either in the name of the city for his use or otherwise. * * * Such right or liability was created for the first time by the act of 21st of March, 1870. *How then can we say that this act does not create a new right in favor of the contractor, and incur a new liability on the part of the defendant?*"

The same in substance was held by the Supreme Court of California in *Brady* v. *King*, 53 Cal., 44.

If the act of 1895 did not cure the defect in the ordinance of March 28, 1893, then it was never cured, and the act of 1895 could not, under the constitution of Illinois, as construed by its courts, justify any assessment for the work previously completed.

In *Pells* v. *City of Paxton*, 176 Ill., 318, we find the following:

"A city council has no right to make an improvement and then, after the improvement is made, pass an ordinance providing for the making of the improvement. The passage of the ordinance must precede the making of the improvement, *and the making of the improvement and all steps thereafter are absolutely void unless preceded by a valid ordinance.*" (Page 326.)

The defects in the first ordinance were incapable of being cured by a retroactive law, for the legislature had no power to dispense with the vital requirement that a valid ordinance should be the first step, and no retroactive statute can cure omissions which it could not have authorized.

From Cooley on Taxation we quote:

"One very precise limit to the power to cure these proceedings is this: They cannot be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all.

* * * * *

"It is certain that whatever the legislature could not have authorized originally it cannot confirm. The unauthorized acts of individuals cannot confer upon the state a power it did not before possess. Therefore no unconstitutional tax can be confirmed, and none that entirely wants any essential element of taxation." (P. 227.)

From Cooley on Constitutional Limitations (2d Ed., bottom page 407), we quote:

"The rule applicable to cases of this description is substantially the following: If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law."

From the same volume (bottom page 420):

"But the healing statute must in all cases be confined to validating acts which the legislature might previously have authorized. It cannot make good retrospectively acts or contracts which it had no power to permit or sanction in advance."

From the same volume (bottom page 421):

"But if township officers should assume to do acts under the power of taxation which could not lawfully be justified as an exercise of that power, no subsequent legislation could make them good."

The foregoing rule is well established in this court.

Anderson v. *Santa Anna*, 11 U. S., at pp. 364, 365.

St. Joseph Township v. *Rogers*, 16 Wallace (U. S.), at p. 663.

Thomson v. *Lee County*, 3 Wallace (U. S.), at p. 331.

See, also,

Folsom v. *Township of Ninety-six*, 59 Fed. Rep., at p. 69.

In Illinois practically the same thing has been held. See *Marsh* v. *Chesnut*, 14 Ill., 223. It was held that a

judgment for taxes could not be validated by a subsequent law, where the assessment had not been returned and completed as required by the statute. The same thing was also held in *Billings* v. *Detten*, 15 Ill., 218; *Conway* v. *Cable*, 37 Ill., 82. In the case last cited the court said that a statute purporting to validate a void tax sale was void as depriving a person of property without due process of law.

Since by the constitution of Illinois a *previous* valid ordinance, providing for the assessment, is *essential* to charge private property, and this, by the terms of the later ordinance in this case, is admitted to have been void, the act of 1895 either did not apply to it at all or did not effectually aid it.

The present is not like those cases in which an equivalent has been received and a moral obligation exists to make recompense which, in some cases, may be enforced by subsequent legislation.

In *New Orleans* v. *Clark*, 95 U. S., 650, this court held that the legislature might, by a new act (not forbidden by the state constitution), require a city to levy a tax for the payment of bonds, the equivalent of which it had received, but said in the same connection:

"A very different question would be presented if the attempt were made to apply the means raised to the payment of claims for which no consideration had been received by the city." (P. 653.)

In the same case the court said:

"Equitable claims which had existed against the dissolved city would continue as before, and be equally subject to legislative recognition and enforcement, or their payment might be required, as in this case, by the act of annexation."

The plaintiffs in error have received nothing from the

22848

Park Board. It may be assumed that their property is, to a certain extent, increased in value by the improvement, but the obligation is not of that kind which the court considers sufficient to justify retroactive statutes. Nearly the entire South Park boulevard system was created and paid for by general tax, but this created no obligation upon the property owners abutting upon it, either legal or moral, to pay for it.

This was held by the supreme court of Missouri not to be the equitable obligation which alone can justify a retrospective statute to enforce it; and it was also held that the rules above cited relating to general taxes have no application.

City of St. Louis v. *Clemens*, 52 Mo., 143.

This element, therefore, may be disregarded.

The act of 1895 is not retroactive in any event so as to make any of the proceedings good from the beginning. If it cures any of these defects at all, it does so only *from the date it took effect*; and this would leave the constitutional requirement of a valid *pre-existing* ordinance still lacking.

In *Spencer* v. *Merchant*, 125 U. S., 351, this court held that a statute passed in 1881 to rectify errors in a previous assessment levied under an act of 1869, justified and authorized a new and independent assessment only, and thus became effective only from its date On this ground alone that proceeding was supported; and it was because of an opinion to the contrary on that subject that two of the judges of this court dissented.

Such was also the decision in the case of *Jones* v. *Tonawanda* (N. Y. Ct. of Appeals), 53 N. E. Rep., 280.

And in *New Orleans* v. *Clark*, 95 U. S., 655, this court held that the statute requiring a tax to be levied for the payment of a pre-existing obligation, for an equivalent already received, "is not a retroactive law—no more so than an appropriation act providing for the payment of a pre-existing claim."

And the court in the same case said:

"The constitutional inhibition (forbidding the passage of retroactive statutes) does not apply to legislation recognizing or affirming the binding obligation of the state, or of any of its subordinate agencies, with respect to past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion."

IX.

THE PLAINTIFFS IN ERROR HEREIN RELY UPON THE ORIGINAL AND ADDITIONAL ASSIGNMENTS OF ERROR HEREIN, WHICH ARE AS FOLLOWS:

First. The court erred in affirming the judgment of confirmation against the property of plaintiffs in error, and each of them.

Second. The county court of Cook County should have dismissed the petition for confirmation of said assessment on the motion of plaintiffs in error, on the ground that upon its face the record was insufficient to support said assessment, and also on the further ground that, in view of the evidence before the court, the same appeared to be insufficient in law, and said supreme court erred in sustaining said refusal and in holding that the same was correct.

Third. The court erred in holding that the county

22849

court of Cook county had jurisdiction to confirm the assessment appealed from as to the property of the plaintiffs in error, and each of them.

Fourth. The court erred in holding that the property of plaintiffs in error could lawfully be assessed for the said improvement by an ordinance and proceedings originating after the work was done, the original ordinance for the assessment having been void.

Fifth. The court, having held that the original ordinance for said improvement, passed in March, 1893, was insufficient to support a proceeding to confirm an assessment therefor, erred in holding that said ordinance was sufficient to support such a proceeding after the work was done, based on a new ordinance passed after the completion of the work.

Sixth. The court erred in holding that the new ordinance, passed after the completion of said improvement, was sufficient to justify the proceeding and judgment appealed from.

Seventh. The county court erred in not granting the motion of plaintiffs in error for a new trial of said cause on the ground of newly discovered evidence, and said supreme court erred in sustaining said county court therein.

Eighth. Said county court erred in not dismissing said proceedings on motion of plaintiffs in error because said proceedings were being carried on and were instituted under a statute passed subsequently to the completion of said improvement, and said supreme court erred in sustaining said county court in refusing to grant said motion.

Ninth. Said county court erred in not sustaining the

motion of plaintiffs in error to dismiss said proceedings because said defendants in error did not produce and prove that they had a consenting petition for the making of said improvement signed by a majority of the owners of real estate fronting thereon, as required by law, and said supreme court erred in sustaining said county court therein.

Tenth. Said county court erred in not granting the motion of plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said county court on behalf of said plaintiffs in error, and said supreme court erred in sustaining said county court.

Eleventh. Said supreme court erred in overruling the assignments of error of plaintiffs in error and each thereof, and in not sustaining the same.

Twelfth. That by the said record it appears that the judgment aforesaid was given for the said West Chicago Park Commissioners against the said above-named plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said above-named plaintiffs in error and against the said West Chicago Park Commissioners, and the said above-named plaintiffs in error pray the judgment aforesaid may be reversed, annulled, and held for nothing and that they may be restored to all things which they have lost by occasion of the said judgment.

22850

ADDITIONAL ASSIGNMENTS OF ERROR.

13th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation against the property of each of the plaintiffs in error herein, for the reason that such judgment denied to each of said plaintiffs in error the rights and privileges guaranteed unto them, respectively, under and by virtue of the Fourteenth Amendment to the Constitution of the United States, and particularly to that portion of section 1 which is as follows:

"* * * No state shall make or enforce any law "which shall abridge the privileges or immunities of "citizens of the United States; nor shall any state deprive "any person of life, liberty or property without due "process of law, nor deny to any person within its "jurisdiction the equal protection of the laws."

14th. Said Supreme Court of Illinois erred in sustaining the order of said County Court of Cook County, which order denied the motion of said plaintiffs in error to dismiss said petition for confirmation, because the record herein, on its face, was insufficient, both in law and under the constitution of the State of Illinois, to support the same, for the reason that no sufficient and valid ordinance was the basis of the proceedings under which said alleged improvement was constructed, although under such laws and said constitution a valid ordinance must be the basis thereof; that it appeared, upon the trial of said cause, that the original ordinance for said improvement was invalid, and the denial of said motion and the affirmance of said judgment by said Supreme Court, imposes a burden upon the property

of the plaintiffs in error without due process of law, and it is a denial to each of them of the equal protection of the law.

15th. The Supreme Court of Illinois erred in holding that said County Court had jurisdiction to confirm said assessment as to the property of said plaintiffs in error, because such judgment of confirmation imposes a charge upon said property without jurisdiction therefor under the laws and constitution of the State of Illinois, for the reason that there was not a preceding valid ordinance as the basis of said proceedings, under which it is alleged said improvement was constructed, and the affirmance of said judgment by said Supreme Court of Illinois as to the property of said plaintiffs in error is, therefore, without due process of law, and it denies to them, respectively, the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

16th. The Supreme Court of Illinois erred in sustaining said judgment of confirmation, and in holding that the property of said plaintiffs in error could be lawfully assessed for the cost of said alleged improvement by an ordinance and under proceedings which originated after the complete construction of such improvement, the original ordinance for the making thereof having been declared void. The established laws of the State of Illinois prohibit the confirmation of a special assessment for work done under a prior invalid ordinance, and the affirmance of the judgment of said County Court imposes a charge upon the property of the plaintiffs in error herein contrary to the provision of the Fourteenth Amendment to the Constitution of the United States.

17th. Said Supreme Court also erred in sustaining said judgment, for the reason that the proceedings which resulted in the entry of such judgment of confirmation against the property of plaintiffs in error herein was instituted and carried to a conclusion and judgment entered under a certain alleged law which was passed subsequent to the making and completion of said alleged improvement; and also because the proceedings under which said alleged improvement was constructed, and which were the basis of the proceedings for confirmation herein, were declared invalid by the Supreme Court of Illinois; that by reason of the judgment of confirmation of said County Court, and the affirmance thereof by said Supreme Court, the plaintiffs in error herein will be deprived of their property without due process of law, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, unless said judgment of confirmation and the affirmance thereof are set aisde.

18th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation and in not setting the same aside, for the reason that said judgment is contrary to the Constitution of the United States and to article 1, section 10 (first), thereof, because the act of the legislature of said State of Illinois, approved June 24, 1895, and in force July 1, 1895, under which said proceedings were carried on in said County Court, were passed and became a law of said state after said alleged improvement had been fully constructed under a previous invalid proceeding.

19th. Said Supreme Court of Illinois erred in affirming said judgment, because such confirmation is contrary to the laws of said State of Illinois in force, and by virtue

of which said alleged improvement was constructed, which laws required that no improvement should be constructed under and by virtue of said act, "except upon the "petition of the owners of a majority of the land fronting "on the proposed improvement or sewer"; that neither said defendants in error nor the Town of West Chicago, the petitioner in the orginal preceedings under which said alleged improvement was constructed, nor any other person or corporation in their or its behalf, ever obtained such consenting petition; by means whereof said original proceedings and the proceedings herein are contrary to the constitution and to the established laws of the State of Illinois, and are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof.

20th. Said Supreme Court of Illinois erred in confirming said judgment, and in not setting the same aside, because said assessment, as to the respective pieces of property of the plaintiffs in error, is levied and assessed against the same in the manner of a special tax, or upon a basis of frontage, without regard to the value of the various pieces of property, and in defiance of the Constitution of the State of Illinois, and Section 9 of Article IX thereof; that said decision and finding of said Supreme Court is also contrary to the Constitution of the United States, and of the Fourteenth Amendment thereof, in this, that the plaintiffs in error are deprived of their property and are denied the rights guaranteed to them in and by said amendment to the Constitution of the United States.

21st. Said Supreme Court erred in sustaining said judgment for the reason that, at the time of the construction of said alleged improvement, there was no ordinance,

either valid or invalid, which set forth the nature, character, locality and description of said improvement, as is and was required by the laws of the State of Illinois, at the time of the construction of such improvement; that the improvement, as constructed, is other and different from that set forth in any ordinance, specifications or plans for the making thereof; that the construction of such improvement, without a valid ordinance, and without a sufficient estimate therefor, is contrary to the established laws of the state of Illinois, and the constitution thereof; by means whereof, the plaintiffs in error were deprived of the rights to which they are entitled under and by virtue of said Fourteenth Amendment to the Constitution of the United States.

22nd. The Supreme Court of Illinois erred in holding that a new ordinance, passed after the completion of said alleged improvement, was sufficient to justify the proceedings and judgment appealed from, because such judgment is contrary to the well-established laws of the State of Illinois; and said County Court thereby sought to charge the property of each of the plaintiffs in error with a public burden and without any statute therefor, except an act approved June 24, 1895, and in force July 1, 1895, which statute is the basis of said alleged assessment proceedings herein, although such statute was without legal force for such purpose; that thereby said Supreme Court and said County Court denied to each of the plaintiffs in error their right to the equal protection of the law, and said courts also denied to them such due process of law as is guaranteed by the Fourteenth Amendment to the Constitution of the United States.

23rd. Said Supreme Court of Illinois erred in sustaining the judgment of said County Court, and in holding

that the act of the legislature of the State of Illinois, and particularly Section 20 thereof, approved June 24, 1895, and in force July 1, 1895, was constitutional and valid, because said act is retroactive in effect and by it said defendants in error seek to charge the property of each of the plaintiffs in error with a public burden, and said defendant in errror and said courts thereby attempt to deprive each of the plaintiffs in error of the rights and privileges guaranteed to them, respectively, by said Fourteenth Amendment to the Constitution of the United States.

24th. Said Supreme Court of Illinois erred in sustaining said judgment of said County Court, because the subject-matter involved in the proceedings herein were fully determined in and by an order entered on March 12, 1897, in said County Court of Cook County, from which order no appeal was taken, in a certain proceedings known in said County Court as No. 10,655; that the entry of the judgment of confirmation under consideration herein was contrary to said order herein lastly referred to, because the subject-matter thereof had been fully adjudicated, and that by reason thereof the proceedings herein are unauthorized by and are contrary to the established laws of the State of Illinois; and in consequence of the entry of said judgment of confirmation, the said courts have denied to each of the plaintiffs in error herein the rights, privileges and immunities guaranteed under and by virtue of the Constitution of the United States, and of said Fourteenth Amendment thereto.

25th. Said Supreme Court of Illinois erred in affirming said judgment, for the reason that it is the settled law of the State of Illinois, and the established construction of its constitution, that the ordinance of March 28, 1893,

which was the ordinance by virtue of which said improvement is alleged to have been constructed, was absolutely void at the time the present proceedings were instituted; and said courts of the State of Illinois, by reason of the conclusions adopted by each thereof, have departed from said settled law of the State of Illinois in the matter under consideration, and each of said courts has attempted to impose the present burden upon the property of each of said plaintiffs in error, contrary to said established law, all of which is in contravention of the Fourteenth Amendment to the Constitution of the United States.

Summary.

The plaintiffs in error, in summarizing their contentions herein, respectfully petition your Honorable Court to set aside the findings of the supreme court of Illinois for the reasons which appear in their assignments of error and for the following causes:

1. The county court had no jurisdiction because the matter in controversy had been fully determined before the hearing herein, and there was no basis for this proceedings. The supreme court should have so found.

2. The order of March 12, 1897, disposed of the matter in controversy herein as to property of plaintiffs, and the supreme court should have so found.

3. There was no valid ordinance as a basis for the present proceedings when the improvement was constructed, so the work which has been done, and the cost of which the defendants in error are seeking to collect, was done without the sanction of law, and, it is contended that under the findings of the courts of Illinois,

the plaintiffs in error are denied the equal protection of the law

4. The improvement as constructed, is not described in any ordinance, as is shown by the motion for a new trial, where is set out the affidavit of Dorr, the engineer who constructed the improvement. This is contrary to the laws of Illinois.

5. The improvement is in fact a part of the park system, and it should be paid for out of the general fund, which is provided for in the park act set forth herein.

6. The laws affecting the matter in controversy herein, as construed by the supreme court of Illinois, are, as we claim, in conflict with the well-established laws of the State of Illinois, as existing at the time of the making of the original ordinance and the construction of the improvement, and the conclusions of the supreme court, which appear in the record herein, are not only in conflict with the laws of said state, but such conclusions are also contrary to the constitution of the United States, as set forth herein.

For these various causes the plaintiffs in error feel that they are warranted in bringing their grievances before your Honorable Court for such determination as may be agreeable to the court. Trusting that our contentions may receive a favorable consideration, and that the findings of the supreme court of Illinois may be set aside, the foregoing is

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

22854

Supreme Court U.S.
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JAMES H. McKENNEY
Clerk

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Reply Brf. of Wilbur

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201.

IN THE

Supreme Court of the United States.

OF THE OCTOBER TERM, A. D. 1900.

No. 17,639.

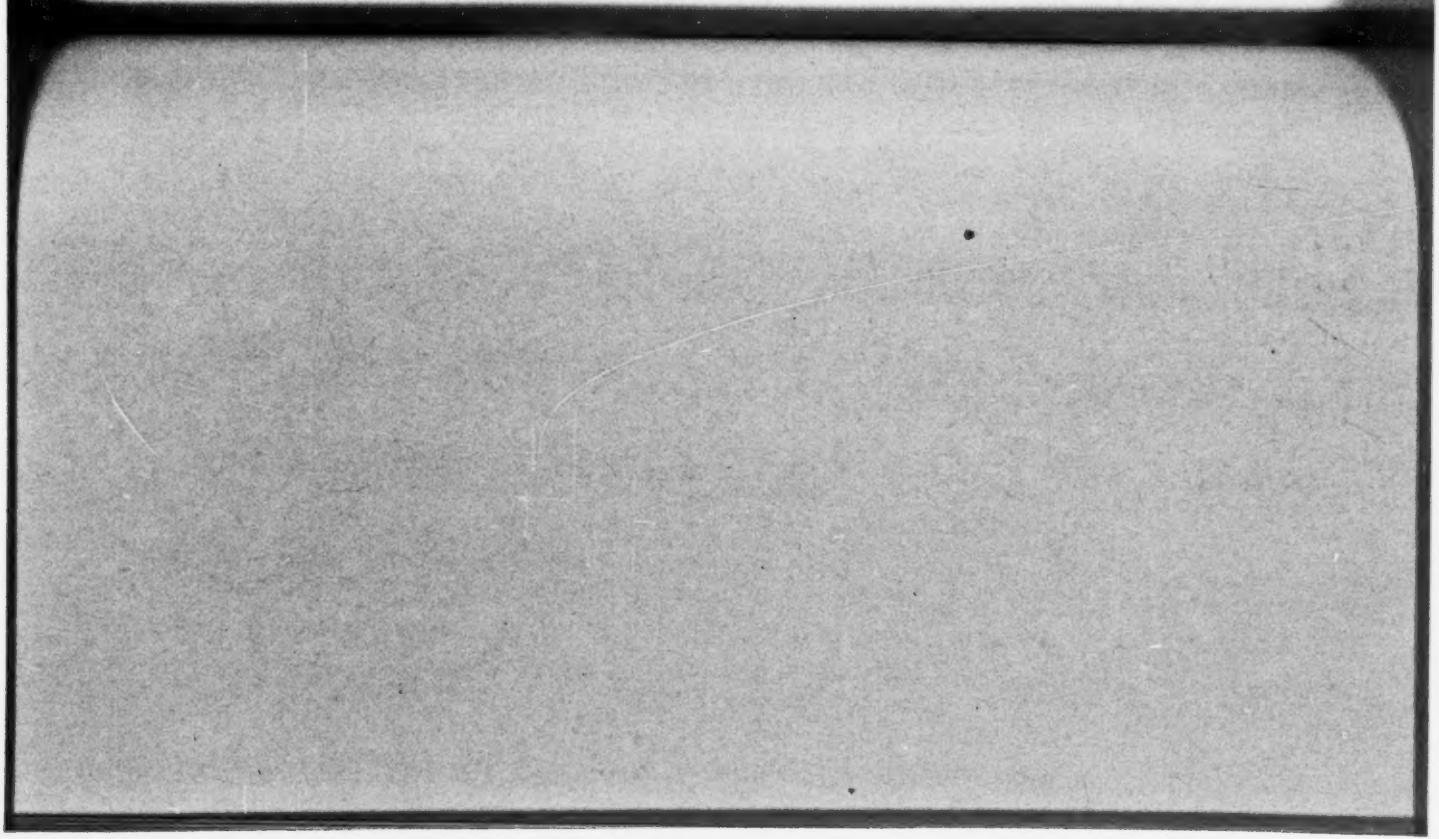
THOMAS F. FARRELL ET AL.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of the State of Illinois.

REPLY BRIEF OF PLAINTIFFS IN ERROR.

GEORGE W. WILBUR,
COUNSEL FOR PLAINTIFFS IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.



22855

IN THE

Supreme Court of the United States,

OF THE OCTOBER TERM, A. D. 1900.

No. 17,369.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of the State of Illinois.

Reply Brief of Plaintiffs in Error.

MAY IT PLEASE THE COURT:

In our brief herein we attempted to discuss the points on which we rely, affirmatively, for a reversal of the judgments of the State courts, and in our oral argument we endeavored to avoid reference to such questions. After the case was on trial call, we received the brief of defendants in error, but were unable to prepare printed reply thereto before the case was actually called for argument. By the kind permission of your Honorable Court, we were allowed a certain time in which to file such reply brief.

One of the questions is:

I.

AS TO THE JURISDICTION OF THIS COURT.

Counsel for defendants in error have cited a number of authorities which they claim show that this Court, under the record, is without jurisdiction. Some of the cases cited we feel will not have the slightest bearing in determining the question of jurisdiction, while others have but little, if anything, in common with the matter under consideration.

We contend that the case is properly before the court, and we confidently expect that the whole record will be considered and that both the federal question and the question as to the merits of the case will be determined.

During oral argument questions were asked as to what was depended upon as a basis of jurisdiction. We then replied, and we now repeat, that we depend upon the objections which were filed in the county court at the time application was made for confirmation, which objections are set forth below. We also depend upon the assignments of error, which were attached to the record filed in the Supreme Court of Illinois. The first and second assignments of error are as follows:

> "1. The court erred in not sustaining the legal objections filed herein on behalf of said objectors as to said assessment, and as to each and every of said objections they say that the court erred in not sustaining the same.
>
> 2. The court erred in not holding that said assessment was void."

While, under the decisions of this Honorable Court, extracts of which appear herein, it does not seem to be

necessary that the federal question shall be brought into view by the most precise and exact language, yet the assignments of error above quoted, which appear on page 64 of printed record, clearly call to the attention of the Supreme Court that the trial court erred in not sustaining the objections which were before it.

The decisions of this court, to which we call attention, seem to determine that the question of jurisdiction is to be found by an inspection of the record, and if such inspection shows that a federal question must, of necessity, have been determined, although no reference is made to such question in the finding of the Supreme Court, then a federal question is involved, and this court has jurisdiction.

We wish to refer the Court to *Murray* v. *City Council of Charleston*, 96 U. S., 432, where we find the following:

> (440) "* * * The validity of the authority given by the State, as well as the validity of the ordinances themselves, was necessarily before the Court of Common Pleas when this case was tried; and no judgment could have been given for the defendant without determining that the ordinances were laws of the State, not impairing the obligation of the contracts made by the City with the plaintiff. And when the case was removed into the Supreme Court of the State, that court understood a federal question to be before it. One of the grounds of the notice of the appeal was, 'That such a tax is a violation of good faith in the contract of loans, impairs the obligation of said contract and is, therefore, unconstitutional and void.' It is plain, therefore, that both in the Common Pleas and in the Supreme Court of the State, a Federal question was presented by the pleadings, and was decided—decided in favor of the state legislation, and against the right the plaintiff claimed he has under the Constitution of the

United States. The city ordinances were in question on the ground of their repugnancy to the inhibition upon the States to make any law impairing the obligation of contracts; and the decision was in favor of their validity. Nothing else was presented for decision, unless it be the question whether the acts of the State legislature authorized the ordinances; and that was ruled affirmatively. The jurisdiction of this court over the judgments of the highest courts of the States, is not to be avoided by the mere absence of express reference to some provision of the Federal Constitution. Wherever rights acknowledged and protected by that instrument are denied or invaded, under the shield of state legislation, this court is authorized to interfere. The form and mode in which the federal question is raised in the State court is of minor importance, if, in fact, it was raised and decided. The Act of Congress of 1867 gives jurisdicttion to this court over final judgments in the highest courts of the State, in suits 'where is drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity.' Not a word is said respecting the mode in which it shall be made to appear that such a question was presented for decision. In the present case it was necessarially involved, without any formal reference to any clause in the Constitution, and it is difficult to see how any such reference could have been made to appear expressly.

"In questions relating to our jurisdiction, undue importance is often attributed to the inquiry whether the pleadings in the state court expressly assert a right under the Federal Constitution. The true test is not whether the record exhibits an express statement that a federal question was presented, but whether such a question was decided, and decided adversely to the federal right. Everywhere in our decisions it has been held that we may review the judgments of a state court when the determination or judgment of that court could not

22857

have been given without deciding upon a right or authority claimed to exist under the Constitution, laws or treaties of the United States, and deciding against that right. Very little importance has been attached to the inquiry whether the Federal question was formally raised. In *Crowell* v. *Randall* (10 Pet., 368), it was laid down, after a review of almost all of our previous decisions, 'that it is not necessary the question should appear on the record to have been raised, and the decision made in direct and positive terms *in ipsissimis verbis*, but that it is sufficient if it appears by clear and necessary intendment that the question must have been raised, and must have been decided, in order to have induced the judgment. This case was followed by *Armstrong et al.* v. *The Treasurer of Athens Co.* (16 *id.*, 281), where it was held sufficient to give this court jurisdiction if it appear from the record of the state court that the federal question was necessarily involved in the decision, and that the court could not have given the judgment or decree which they passed without deciding it.

(443) "* * * Of course, the question is directly presented whether the ordinances are a justification; whether they can and do relieve the debtor from full compliance with the promise; in other words, whether the ordinances are valid and may lawfully be applied to the contracts. The court gave judgment for the defendant, which would have been impossible had it not been held that they have the force of law, notwithstanding the Constitution of the United States, and the Supreme Court affirmed the judgment. Our jurisdiction, therefore, is manifest."

In *Chicago Life Ins. Co.* v. *Needles*, 113 U. S., 574, it is stated:

(578) " * * * At the final hearing, it moved the court, upon written grounds, for a final decree in its behalf; one of which was, that the statutes of the State, under which these proceedings were

had, were in violation of the Constitution of the United States, in that they impaired the obligation of the contract between the State and the company, as well as of the contracts between the company and its policy-holders and creditors.

"This motion was denied, and a final judgment rendered perpetually enjoining the company from further prosecution of its business. From that judgment a writ of error was prosecuted to the Supreme Court of the State, where, among other things, was assigned for error the refusal of the court of original jurisdiction to adjudge that the said statutes of Illinois were in violation of the Constitution of the United States. The judgment of the inferior court was, in all things, affirmed by the Supreme Court of the State, and from that judgment of affirmance the present writ of error is prosecuted.

"The Supreme Court of Illinois did not, in terms, pass upon the claim distinctly made there, as in the court of original jurisdiction, that the statutes in question were in derogation of rights and privileges secured to appellant by the Constitution of the United States. But the final judgment necessarily involved an adjudication of that claim; for, if the statutes upon the authority of which alone the auditor of state proceeded, are repugnant to the National Constitution, that judgment could not properly have been rendered. This court, therefore, has jurisdiction to inquire whether any right or privilege protected by the Constitution of the United States, has been withheld or denied by the judgment below. And our jurisdiction is not defeated, because it may appear, upon examination of this federal question, that the statutes of Illinois are not repugnant to the provisions of that instrument. Such an examination itself involves the exercise of jurisdiction. The motion to dismiss the writ of error upon the ground that the record does not raise any question of a federal nature must, therefore, be denied."

In *Furman* v. *Nichol*, 8 Wall., 44, we find the following:

(55) "The main question involved in this suit is of more importance than difficulty; but before we proceed to discuss it, it is necessary to consider the point of jurisdiction which is raised by the defendant in error. The circumstances under which this court is authorized to review the decisions of State tribunals has been so often considered and decided, that there is hardly anything left to do, but to apply the already well-settled legal principles, which govern this class of cases, to a particular record, in order to decide whether or not we have jurisdiction to hear and determine the matter in controversy. It would be useless labor to go through with the various adjudications of this court on this subject. It is enough for the purposes of this suit to say, that a cause can be removed from a state court into this court under the 25th section of the Judiciary Act of 1789, whenever some one of the questions embraced in it was relied on by the party who brings the cause here, and when the right he claimed it gave him, was denied to him by the state court. It is urged that the particular provision of the Constitution, which the plaintiffs in error say has been violated in its application to their case, should be contained in the pleadings, but this is in no case necessary. If the record shows, either by express averment, or by clear and necessary intendment, that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach, without applying it to the case in hand, then the jurisdiction of this court attaches. And it need not appear that the state court erred in its judgment. It is sufficient to confer jurisdiction that the question was in the case, was decided adversely to the plaintiffs in error, and that the court was induced by it to make the judgment which it did.

"Testing the case at bar by these rules, it is apparent that it is properly here, and must be disposed of on its merits."

In *Murdock* v. *City of Memphis* (20 Wall.), 87 U. S., 590, we find the following:

(633) "The omitted clause of Act of 1789 declared that no other error should be regarded as a ground of reversal than such as appears on the face of the record and immediately respects the beforementioned questions.

"It is probable that in determining whether one of those questions was actually raised and decided in the state court, this court has been inclined to restrict its inquiries too much by this express limitation of the inquiry 'to the face of the record.' What was the record of the case was pretty well understood as a common-law phrase at the time that statute was enacted, but the statutes of the states and new proceedings in those courts have changed and confused the matter very much since that time."

* * * * *

(634) "But after all, the record of the case, its pleadings, bills of exceptions, judgment, evidence, in short, its record, whether it be a case in law or equity, must be the chief foundation of the inquiry; and while we are not prepared to fix any absolute limit to the sources of the inquiry under the new act, we feel quite sure it was not intended to open the scope of it to any loose range of investigation."

* * * * *

"But when it appears that the Federal question was decided erroneously against the plaintiff in error, we must then reverse the case undoubtedly, if there are no other issues decided in it than that. It often has occurred however, and will occur again, that there are other points in the case than those of Federal cognizance, on which the judgment of the court below may stand; those points being of themselves sufficient to control the case.

"Or it may be, that there are other issues in the case, but they are not of such controlling influence on the whole case that they are alone sufficient to support the judgment.

"It may also be found that notwithstanding there

are many other questions in the record of the case, the issue raised by the Federal question is such that its decision must dispose of the whole case.

"In the two latter instances there can be no doubt that the judgment of the state court must be reversed, and under the new act this court can either render its final judgment or decree here, or remand the case to the state court for that purpose."

In *Davidson* v. *New Orleans*, 96 U. S., 97, quoted at considerable length in brief of counsel for defendants in error, we find the following:

(102) "* * * But when, in the year of grace 1866, there is placed in the Constitution of the United States a declaration that 'no state shall deprive any person of life, liberty or property without due process of law,' can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation. It seems to us that a statute which declares in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A., shall be and is hereby vested in B., would, if effectual, deprive A. of his property without due process of law, within the meaning of the constitutional provision."

(107) Mr. Justice BRADLEY: "In the conclusion and general tenor of the opinion just read I concur. But I think it narrows the scope of inquiry as to what is due process of law more than it should do. * * * "But the court in that case (18 How., 272) expressly holds that it is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as the executive and judicial, power of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law' by its mere will."

(p. 276) "I think, therefore, we are entitled, under the fourteenth amendment, not only to see there is some process of law, but, 'due process of law,' provided by the state law when a citizen is deprived of his property; and that, in judging what is 'due process of law,' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law;' but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.' Such an examination may be made without interfering with that large discretion which every legislative power has of making wide modifications in the forms and procedure in each case, according as the laws, habits, customs and preferences of the people of the particular state may require."

Spencer v. *Merchant*, reported in the 125 U. S., 345, is a special assessment proceedings brought by writ of error to the Supreme Court of the State of New York to review a judgment of that court for the defendant in regard to the validity of an assessment for regulating, grading and paving a certain street. In relation to the question of jurisdiction as applied to the case under consideration, I wish to call the attention of the court to the following:

(352) "The question submitted to the Supreme Court of the State was whether this assessment on the plaintiff's lot was valid. He contended that the statute of 1881, was unconstitutional and void because it was an attempt by the legislature to validate a void assessment, without giving the owners of the land assessed an opportunity to be heard upon the whole amount of the assessment. He thus directly, and in apt words, presented the question whether he

had been unconstitutionally deprived of his property without due process of law, in violation of the first section of the Fourteenth Amendment to the Constitution of the United States, as well as of art. 1, sec. 7, of the Constitution of New York; and no specific mention of either constitutional provision was necessary in order to entitle him to a decision of the question by any court having jurisdiction to determine it. The adverse judgment of the Supreme Court, affirmed by the Court of Appeals of the State, necessarily involved a decision against a right claimed under the Fourteenth Amendment to the Constitution of the United States, which this court has jurisdiction to review. *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall., 116, 142; *Murray* v. *Charleston*, 96 U. S., 432, 442; *Furman* v. *Nichol*, 8 Wall., 44, 56; *Chicago Life Ins. Co.* v. *Needles*, 113 U. S., 574, 579.

"The jurisdiction of this court, as is well understood, does not extend to a review of the judgment of the State court, so far as it depended upon the Constitution of the State. *Provident Institution for Savings* v. *Jersey City*, 113 U. S., 506, 514. "Yet, as the words of the two constitutions are alike in this respect, the decisions of the highest court of the State upon the effect of these words are entitled to great weight."

As stated in oral argument, the Constitution of the State of Illinois contains a provision similar to the provision which is a part of the fourteenth amendment to the Constitution of the United States.

The 9th objection found on page 11 of printed record states, in effect, that the act under which the petition is filed, approved June 24, 1895, and in force July 1, 1895, is not in accordance with the Constitution of the State of Illinois, and is therefore void.

The 17th objection on page 12 of printed record, states:

"That there is no statute or provision of law in

force in the State of Illinois authorizing the West Chicago Park Commisisoners to make a special assessment for any improvement whatever; that the petition herein and the assessment filed therewith are for a special assessment for the cost of said improvement, and made to be levied upon all property benefited and not upon all property abutting upon said improvement, and such proceedings are therefore void."

The 24th objection on page 13 of printed record states:

" * * * That said special assessment is void because it is not levied in accordance with any ordinance providing for said special assessment and because the ordinance which is the basis of said special assessment has been declared void; that said ordinance upon which said improvement is based is unconstitutional and void because it provides for several distinct and independent improvements based upon altogether different and distinct acts of the legislature; that it is unreasonable and oppressive; that said assessment is void because it appears from the face of the petition that the only ordinance in any manner specifying the nature, character, locality and description of the improvement was an ordinance passed by the town of West Chicago and not by the West Chicago Park Commissioners, and that said ordinance has been declared absolutely null and void by the Supreme Court, and no valid estimate or valid assessment could be based thereon. * * *"

Similar objections, but for different property, are found on pages 14 and 15 of printed record.

The 11th additional objection on page 19 of printed record is as follows:

"The petition and proceedings herein are insufficient and void because they are contrary to the Constitution of the State of Illinois, because the provisions of the statute under which such petition is filed is retroactive and because such petition and the

proceedings herein put clouds upon the titles to the property of these objectors without due process of law, and because said petition and the proceedings herein are in other respects contrary to the Constitution of the State of Illinois and the laws thereof."

The 12th objection on the same page is as follows:

"The statute under which the present proceedings are being carried on is contrary to the Constitution of the United States and in conflict with section 10 (first) of article 1 thereof."

The reference to section 10 of article 1 contained in the foregoing objection, was inserted inadvertantly, as stated in oral argument. It is claimed, however, that the remaining part of the objection refers generally to the Constitution of the United States.

As stated herein, section 2 of article 11 of the Constitution of Illinois contains the following:

"No person shall be deprived of life, liberty or property without due process of law."

The fourteenth amendment to the Constitution of the United States which is so frequently called to the attention of your Honorable Court, is, in part, as follows:

"Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It will be seen that the above provision of the Constitution of Illinois and the fourteenth amendment are substantially in the same language, and we feel we are justified in asking your Honorable Court to apply the rule which seems to be laid down in the case of *Spencer* v. *Merchant, supra.*

In the objections above referred to are several refer-

ences to the Constitution of Illinois, and in the 11th objection is found the expression, "without due process of law."

The opinion in the *Spencer* case seems to be a full discussion of the merits of the case and the decision is based thereon. The finding of the lower court was affirmed by this court, MR. JUSTICE MATTHEWS and MR. JUSTICE HARLAN dissenting.

The petition for citation, which appears on page 73 of printed record, contains the following:

> "Now come (the plaintiffs in error, naming them) and show to the chief justice of the Supreme Court of the State of Illinois that in the record, and also in the rendition of the judgment in the above-entitled cause, lately pending in the Supreme Court of the State of Illinois, between Thomas F. Farrel *et al.*, appellants, and The West Chicago Park Commissioners, appellees, and in which final judgment was rendered against said Thomas F. Farrell *et al.*, appellants, on the 7th day of December, 1899, it appears in the record now remaining in the Supreme Court of Illinois that certain rights and privileges were claimed under the Constitution of the United States by said Thomas F. Farrell, *et al.*, appellants, and that said Supreme Court of the State of Illinois erroneously decided against said rights and privileges of said Thomas F. Farrell *et al.*, appellants, which were specially set up and claimed under said Constitution; and, further, that the validity of the authority exercised by said State of Illinois, was drawn in question in a suit by said Thomas F. Farrell *et al.*, appellants, on the ground that said authority was repugnant to the Constitution of the United States, and the decision of said Supreme Court of Illinois was in favor of the validity of said authority so exercised; from all of which said Thomas F. Farrell *et al.*, appellants, allege that it appears in the said record and proceed-

22862

> ings in said suit manifest error has occurred to the great damage of said Thomas F. Farrell *et al.*, appellants."

This petition was allowed by the Chief Justice of the Supreme Court of Illinois, as appears by an order set out on page 75 of printed record, which is in part as follows

> "Upon motion of George W. Wilbur, attorney for appellants, and upon filing a petition for writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed, to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein, and that the amount of the bond in said writ of error be and hereby is fixed at the sum of five hundred dollars ($500.00)."

This order was signed by the Chief Justice of the Supreme Court of Illinois.

On oral argument we showed, by our brief which was filed in the Supreme Court of Illinois, that the question as to the fourteenth amendment to the Constitution of the United States, was brought directly before the court. We read from such brief substantially the following:

> "The proceedings herein are contrary to the Constitution of the State of Illinois. Section 2, Article 2, says: 'No person shall be deprived of life, liberty or property without due process of law.'" * * *
>
> "The fourteenth amendment to the Constitution of the United States is in substantially the same language, and there are numerous authorities construing its meaning, which will not be cited, as they will be brought to your attention by counsel for other objections in other appeals in the same proceedings."

From the petition for rehearing, to which we also referred, we read substantially the following:

"The provision of the fourteenth amendment to the Constitution of the United States is as follows: 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

"The Supreme Court of the United States, in passing upon this amendment in a case taken from a State court, has held that where, *by the decision of the court*, property of a citizen is taken without just compensation, the Constitution of the United States is violated, although the statute of the State provides for such compensation. *Chicago, B. & Q. R. R. v. Chicago*, 166 U. S., 226."

From what is shown herein, it seems to us that the only conclusion to be drawn was that a federal question, arising under the fourteenth amendment to the Constitution of the United States, was before the Supreme Court of Illinois, and that such question was decided adversely to the plaintiffs in error herein. To give any other construction is to presume, as it seems to us, that the Chief Justice of the Supreme Court, in allowing the writ, acted without due consideration, and in disregard of the duties imposed upon him, when such application was made.

We feel warranted in anticipating that your Honorable Court will conclude that a federal question was before the trial courts, and that an adverse decision thereof denied to the plaintiffs in error herein the privileges and immunities claimed by them under the Constitution of the United States.

II.

AS TO AN ASSESSMENT AGAINST CONTIGUOUS PROPERTY.

This point was discussed somewhat in the original brief, but we wish to refer to a paragraph of the opinion herein, which appears at the end of page 69 of printed record, and is as follows:

> "The validity of the assessment generally is questioned because the original ordinance limited the assessment to contiguous property, while the new ordinance provides for an assessment upon all property benefited. If that objection would be available, it would only be to an owner whose property was not included in the terms of the original ordinance, and counsel has not made it appear that any of the appellants' property is so situated. If the property of appellants is contiguous to the improvement they could not be prejudiced by a new assessment-roll covering a larger district, by which other property-owners are made to contribute to the expense."

Our argument before the Supreme Court, as must be inferred, was to the effect that the Act of 1895, under which the present proceedings were instituted, was unconstitutional and void, and contrary to the Statutes of Illinois, because it provided for a special assessment, while the original proceedings, under which the improvement was constructed, provided for a special tax; that the laws of Illinois require that where a new assessment is made, it shall be in substantially the same form as the original assessment.

Art. IX., Cities, etc., § 48, is as follows:

> "If, from any cause, any city or village shall fail to collect the whole or any portion of any special as-

> sessment which may be levied, which shall not be canceled or set aside by the order of any court, for any public improvement authorized to be made and paid for by special assessment, the city council or board of trustees may, at any time within five years after the confirmation of the original assessment, direct a new special assessment to be made upon the delinquent property for the amount of such deficiency, and interest thereon from the date of such original assessment, which assessment shall be made, as near as may be, in the same manner as is herein prescribed for the first assessment." * * *

Section 20 of the act of 1895, under which the present proceedings are being carried on, is, in form, practically the same as the section above quoted in part, except that it does not limit the proceedings to the same property, neither does it require that the assessment "shall be made as near as may be in the same manner as herein prescribed for the first assessment." The contention is that the first assessment was confined to contiguous property, while the present assessment is against all property benefited. For this reason we claim that the present proceedings are contrary to law.

An assessment against property generally is very different from an assessment against abutting property, and whether or not the plaintiffs in error herein are prejudicially affected by the change in the character of the assessment is not the question, but the point is that the assessment is void, because it is contrary to the provisions of the statute, and if it be illegal, then only one conclusion can be reached, and that is, that the property of plaintiffs in error should not be subjected to the penalties of the assessment.

We argued on this theory, that is, that a special as-

sessment could not be made to collect for work done under a special tax proceedings which had been defeated. If a special assessment had been made, providing such, of course were possible, then the boundaries of the property involved in such assessment would have been extended, so as to include all property benefited, and thereby the assessment against property abutting on the improvement would have been proportionately diminished. The paragraph of the opinion set forth above, shows that the assessment was made, however, against the same property involved in the original assessment, notwithstanding the requirements of section 20 of the statute set forth herein.

We will admit that we would not be prejudiced "by a new assessment-roll covering a larger district, by which other property owners are made to contribute to the expense," and that is the point upon which we are now insisting, that is, that the assessment roll was too restricted, and thereby that it is contrary to the laws of Illinois, under which it is made.

Loch v. *Trustees of Columbia Tp.*, 91 Fed. Rep., p. 37, is a case in which the question of a frontage assessment is discussed, and many authorities are cited bearing thereon. Such authorities, are decisions of this court and of state and federal courts. The decision cites the case of *Norwood* v. *Baker*, 19 Sup. Ct., 187. The syllabus of the *Loch* case contains the following:

"A statute providing for the assessment of the entire cost of a public improvement on abutting property, by the front foot, without reference to special benefits, rests the assessment on an illegal basis, and is void as in contravention of the provision of the fourteenth constitutional

amendment that private property shall not be taken without due process of law."

Fay v. *City of Springfield*, 94 Fed. Rep., 409, is a bill in equity to enjoin the collection of special taxes assessed against lots fronting on Commercial street, in the city of Springfield, Missouri.

Lyon v. *Town of Tonawanda*, 98 Fed. Rep., 361, is a special assessement proceedings, and the decision is based largely upon the authority in *Village of Norwood* v. *Baker*, 172 U. S., 269.

The syllabus is in part as follows:

"An assessment made pursuant to a state law, for grading and paving a highway, which apportions the entire cost of such improvement upon the abutting land according to the foot rule, without regard to the size and value of the parcels or the special benefits accruing therefrom, is in violation of the 5th and 14th amendment to the Constitution of the United States."

In each of the foregoing authorities is a liberal discussion of the questions relating to frontage assessments. Each case refers to the Norwood case as the basis, largely, for the conclusion reached. An inspection of the text of these opinions might be to the advantage of the plaintiffs in error herein.

22865

III.

AS TO THE CONSENTING PETITION.

The act of 1873, under which the original proceedings were instituted, and the improvement was constructed, provides "that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer." (Original brief, page 13.)

The petition for the present proceedings states: "That your petitioner was requested and authorized to undertake and proceed with said improvement by a petition duly made in writing by the owners of a majority of the land frontage on the proposed improvement, as required by said act of May 2, 1873." No mention is made of a consenting petition in the ordinance, which is the basis of this proceeding. The original ordinance was offered in evidence on the hearing, over the objection and exception of counsel for plaintiffs in error herein, and it appears on page 25 of printed record. The ordinance contains the following:

> "Whereas, said Board of West Chicago Park Commissioners have also submitted to the corporate authorities of the town of West Chicago a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,
>
> "Whereas, the corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas park, or Douglas boulevard, from the

> south line of Garfield Park to the west line of Douglas Park, as provided by law; * * * "

The bill of exceptions does not show that the petition referred to was offered in evidence, although plaintiffs in error insisted that such consenting petition was jurisdictional. This point appears in the opinion on page 69 of printed record, which adopts the opinion in the *Lombard* case, known in the Supreme Court of Illinois as *Cummings v. West Chicago Park Commissioners*, where it is stated:

> "The ordinance recites that said corporate authorities, upon such official investigation, found the petition contained the signatures of the owners of a majority of the land fronting on said Douglas boulevard so proposed to be improved. This recitation, we think, properly receivable in evidence as *prima facie* proof of the facts recited."

We contend that the Supreme Court erred in its findings in regard to the consenting petition, and that such findings are contrary to the well-established principles of law, which are to the effect that each party is required to introduce the best evidence; that the best evidence as to this proposition would have been the consenting petition itself, and in its absence, or in the event of its loss, the park commissioners should have been required to show a reason for not presenting it, and thereafter to establish its contents by secondary evidence. We claim that the action of the Supreme Court in this matter has resulted in depriving the plaintiffs in error of their just rights under the laws of the State of Illinois.

IV.

AS TO CHANGE IN THE CHARACTER OF THE IMPROVEMENT, AND AS TO THE ACTUAL COST THEREOF.

We wish to call the attention of the court briefly to the affidavit which was presented on the motion for a new trial, and which appears on pages 56 to 61 of printed record. This is the affidavit of Mr. Dorr, a civil engineer, who constructed the boulevard referred to in this proceeding. He shows, by his affidavit, and by plats, which are attached thereto, that material changes were made in the construction of the improvement: that at the intersection of the two arms of the improvement a very substantial change was made: that the center lawn on the north and south branch of the boulevard was reduced from 130 feet, as provided for in the original ordinance, to 120 feet; that the additional ten feet were added to the side lawn west of said center lawn, making such side lawn twenty-two feet in width instead of twelve feet. This change undoubtedly resulted in great benefit to the owners of property on the west side of the north and south branch of the boulevard, and also to an equal amount of damage to the owners of property on the east side of the north and south branch of said boulevard.

The trial court should have allowed a new trial under this showing, as we contend, and the Supreme Court should have set aside the finding of the County Court for the same reason.

The Supreme Court of Illinois has held that the improvement must be constructed in substantial compliance with the ordinance relating thereto.

In *Church* v. *The People*, 174 Ill., 366, it is held (369):

"The position of appellants that exact and literal compliance with the terms of an ordinance is necessary in order to fix the liability of the property holder to pay the assessment is not tenable, nor is the case of *Rossiter* v. *City of Lake Forest*, 151 Ill., 489, authority in support of that contention. In that case we said (p. 493): 'Unquestionably the ordinance is the authority for and the basis of a special assessment for a local improvement, and the work must conform *substantially* to the nature, character, locality and description given in the ordinance; and any deviation therefrom which renders the improvement *less beneficial* to the property assessed should entitle the owner to relief against the assessment. Any *such* alteration, however slight, becomes to the owner a substantially material change.'"

Page 371:

"But when, as in this case, the applicant for judgment and order of sale admits that since the adoption of the ordinance and the rendition of the judgment of confirmation a change in the location of the improvement has been ordered and made, and that the assessment for which he asks judgment is to be applied to the payment of the expenses of an improvement confessedly not located in exact accordance with the provisions of the ordinance, the question legitimately arises whether the ordinance and judgment of confirmation are properly applicable to the sewer as constructed. We conceive it to be the duty of the court, in such a case, to require of the applicant it be proven that the location of the sewer is, in every substantial and material point of view, within the proper construction of the terms of the ordinance upon which the assessments were estimated, and the judgment of confirmation proceeded."

Cooley on Taxation, page 672, says:

> "In general no defense to an assessment that the contract for work has not been performed according to its term is allowed, but this doctrine must be confined within its proper limits. It cannot be extended to cover a case in which the authorities, after contracting for one thing, have seen fit to accept something different in its place, for if this might be done, the statutory restraint upon the actions of local authorities in these cases would be of no more force than they should see fit to allow.'"

It seems to us that the case at bar comes clearly within the reasoning of the above authority, and that a new trial should have been granted. Questions were asked Dorr on the hearing as to the construction of the boulevard at the intersection of the two branches, and on objection, he was not permitted to answer. (Printed record 49.) If a municipal authority can construct an improvement, such as the one in question, without regard to the forms of law and the requirements of its own ordinances, then, it seems to us, that the necessity for any restrictions upon it disappears, and by virtue of its office it has a license to assess the property within its control in such manner as it may desire, and owners are powerless to interpose any successful objection thereto.

The estimate of the cost of the improvement, which was made, by the way, after its entire completion, as shown on page 9 of printed record, is $250,207.20.

Mr. Dorr, in his affidavit, and on page 61 of printed record, states:

> "This affiant further states that from his best knowledge, information, and belief in regard to the cost of said improvement, provided for by said ordinance, plans, and specifications, and upon the careful examination of his own estimates made at the

> time and from certain records and documents of the petitioners herein, the entire cost of said boulevard improvement so provided for in said original ordinance, plans and specifications, exclusive of engineering, surveying and inspection, did not exceed the sum of $195,239.21."

The unverified estimate of commissioners is	$250,207.20
The sworn estimate of Dorr is	195,239.21
Excess of estimate over cost, as shown by affidavit of Dorr	$ 54,967.99

The difference above shown is about one-fifth of the entire cost of the improvement, and the trial court as well as the Supreme Court, should have given the matter consideration and granted a new trial.

This showing was made upon an application for judgment of confirmation, while in the *Church* case the objection was raised upon application for judgment of sale. In the latter case the objection was entertained, while it was without force in the case at bar.

To have discovered the change in the improvement within time so as to have the benefit thereof, as intimated in the opinion of the Supreme Court herein, would have called upon the plaintiffs in error to watch the work of construction during the whole period thereof, and if there was a variance from the terms of the ordinance they could have taken advantage of it on the hearing, by proper proof. In other words, the plaintiffs in error should have doubted the park commissioners, and should have presumed that they would violate their own ordinances. Possibly the plaintiffs in error ought to have so acted, but unfortunately for them, their faith in the park board was greater than their business discretion.

22868

There is certainly no consideration passing to the owners of property assessed in this proceeding for the excess of the assessment over the cost of the improvement, as set forth above. In the absence of any showing to the contrary, we may be justified in presuming the cost as fixed by Dorr to be correct.

Conclusion.

We have extended the foregoing far beyond the boundaries originally intended, and by so doing we trust we have not trespassed too largely upon the valuable time of the court. We sincerely hope the cause of the plaintiffs in error has been brought before the court in such a manner as may justify a finding that will be favorable to their wishes.

Respectfully submited.

George W. Wilbur,
Counsel for Plaintiffs in Error.

22869

Office Supreme Court U. S.
FILED
MAR 11 1901
JAMES H. McKENNEY,
Clerk.

No. 201.

Motion & assignment of errors.

Filed Mar. 11, 1901.

Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE ADDITIONAL ASSIGNMENTS OF ERROR.

Now, on this day, come the above named plaintiffs in error, by George W. Wilbur, their counsel, and move the court for leave to file additional assignments of error, which additional assignments ot error are numbered from 13 to 25, inclusive, and are made a part hereof.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

22870

Thomas F. Farrell et al. vs. West Chicago Park Commissioners.

No. 201.

ADDITIONAL ASSIGNMENTS OF ERROR.

13th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation against the property of each of the plaintiffs in error herein, for the reason that such judgment denied to each of said plaintiffs in error the rights and privileges guaranteed unto them, respectively, under and by virtue of the Fourteenth Amendment to the Constitution of the United States, and particularly to that portion of section 1 which is as follows:

"* * * No state shall make or enforce any law "which shall abridge the privileges or immunities of "citizens of the United States; nor shall any state deprive "any person of life, liberty or property without due "process of law, nor deny to any person within its "jurisdiction the equal protection of the laws."

14th. Said Supreme Court of Illinois erred in sustaining the order of said County Court of Cook County, which order denied the motion of said plaintiffs in error to dismiss said petition for confirmation, because the record herein, on its face, was insufficient, both in law and under the constitution of the State of Illinois, to support the same, for the reason that no sufficient and valid ordinance was the basis of the proceedings under which said alleged improvement was constructed,

although under such laws and said constitution a valid ordinance must be the basis thereof; that it appeared, upon the trial of said cause, that the original ordinance for said improvement was invalid, and the denial of said motion and the affirmance of said judgment by said Supreme Court, imposes a burden upon the property of the plaintiffs in error without due process of law, and it is a denial to each of them of the equal protection of the law.

15th. The Supreme Court of Illinois erred in holding that said County Court had jurisdiction to confirm said assessment as to the property of said plaintiffs in error, because such judgment of confirmation imposes a charge upon said property without jurisdiction therefor under the laws and constitution of the State of Illinois, for the reason that there was not a preceding valid ordinance as the basis of said proceedings, under which it is alleged said improvement was constructed, and the affirmance of said judgment by said Supreme Court of Illinois as to the property of said plaintiffs in error is, therefore, without due process of law, and it denies to them, respectively, the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

16th. The Supreme Court of Illinois erred in sustaining said judgment of confirmation, and in holding that the property of said plaintiffs in error could be lawfully assessed for the cost of said alleged improvement by an ordinance and under proceedings which originated after the complete construction of such improvement, the original ordinance for the making thereof having been declared void. The established laws of the State of Illinois prohibit the confirmation

of a special assessment for work done under a prior invalid ordinance, and the affirmance of the judgment of said County Court imposes a charge upon the property of the plaintiffs in error herein contrary to the provision of the Fourteenth Amendment to the Constitution of the United States.

17th. Said Supreme Court also erred in sustaining said judgment, for the reason that the proceedings which resulted in the entry of such judgment of confirmation against the property of plaintiffs in error herein was instituted and carried to a conclusion and judgment entered under a certain alleged law which was passed subsequent to the making and completion of said alleged improvement; and also because the proceedings under which said alleged improvement was constructed, and which were the basis of the proceedings for confirmation herein, were declared invalid by the Supreme Court of Illinois; that by reason of the judgment of confirmation of said County Court, and the affirmance thereof by said Supreme Court, the plaintiffs in error herein will be deprived of their property without due process of law, and contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, unless said judgment of confirmation and the affirmance thereof are set aisde.

18th. Said Supreme Court of Illinois erred in sustaining said judgment of confirmation and in not setting the same aside, for the reason that said judgment is contrary to the Constitution of the United States and to article 1, section 10 (first), thereof, because the act of the legislature of said State of Illinois, approved June 24, 1895, and in force July 1, 1895, under which said proceedings were carried on in said County Court, were

passed and became a law of said state after said alleged improvement had been fully constructed under a previous invalid proceeding.

19th. Said Supreme Court of Illinois erred in affirming said judgment, because such confirmation is contrary to the laws of said State of Illinois in force, and by virtue of which said alleged improvement was constructed, which laws required that no improvement should be constructed under and by virtue of said act, "except upon the "petition of the owners of a majority of the land fronting "on the proposed improvement or sewer"; that neither said defendants in error nor the Town of West Chicago, the petitioner in the orginal preceedings under which said alleged improvement was constructed, nor any other person or corporation in their or its behalf, ever obtained such consenting petition; by means whereof said original proceedings and the proceedings herein are contrary to the constitution and to the established laws of the State of Illinois, and are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof.

20th. Said Supreme Court of Illinois erred in confirming said judgment, and in not setting the same aside, because said assessment, as to the respective pieces of property of the plaintiffs in error, is levied and assessed against the same in the manner of a special tax, or upon a basis of frontage, without regard to the value of the various pieces of property, and in defiance of the Constitution of the State of Illinois, and Section 9 of Article IX thereof; that said decision and finding of said Supreme Court is also contrary to the Constitution of the United States, and of the Fourteenth Amendment thereof, in this, that the plaintiffs in error are deprived of their

22872

property and are denied the rights guaranteed to them in and by said amendment to the Constitution of the United States.

21st. Said Supreme Court erred in sustaining said judgment for the reason that, at the time of the construction of said alleged improvement, there was no ordinance, either valid or invalid, which set forth the nature, character, locality and description of said improvement, as is and was required by the laws of the State of Illinois, at the time of the construction of such improvement; that the improvement, as constructed, is other and different from that set forth in any ordinance, specifications or plans for the making thereof; that the construction of such improvement, without a valid ordinance, and without a sufficient estimate therefor, is contrary to the established laws of the state of Illinois, and the constitution thereof: by means whereof, the plaintiffs in error were deprived of the rights to which they are entitled under and by virtue of said Fourteenth Amendment to the Constitution of the United States.

22nd. The Supreme Court of Illinois erred in holding that a new ordinance, passed after the completion of said alleged improvement, was sufficient to justify the proceedings and judgment appealed from, because such judgment is contrary to the well-established laws of the State of Illinois; and said County Court thereby sought to charge the property of each of the plaintiffs in error with a public burden and without any statute therefor, except an act approved June 24, 1895, and in force July 1, 1895, which statute is the basis of said alleged assessment proceedings herein, although such statute was without legal force for such purpose; that thereby said Supreme Court and said County Court denied to each of the plaint-

iffs in error their right to the equal protection of the law, and said courts also denied to them such due precess of law as is guaranteed by the Fourteenth Amendment to the Constitution of the United States.

23rd. Said Supreme Court of Illinois erred in sustaining the judgment of said County Court, and in holding that the act of the legislature of the State of Illinois, and particularly Section 20 thereof, approved June 24, 1895, and in force July 1, 1895, was constitutional and valid, because said act is retroactive in effect and by it said defendants in error seek to charge the property of each of the plaintiffs in error with a public burden, and said defendant in errror and said courts thereby attempt to deprive each of the plaintiffs in error of the rights and privileges guaranteed to them, respectively, by said Fourteenth Amendment to the Constitution of the United States.

24th. Said Supreme Court of Illinois erred in sustaining said judgment of said County Court, because the subject-matter involved in the proceedings herein were fully determined in and by an order entered on March 12, 1897, in said County Court of Cook County, from which order no appeal was taken, in a certain proceedings known in said County Court as No. 10,655; that the entry of the judgment of confirmation under consideration herein was contrary to said order herein lastly referred to, because the subject-matter thereof had been fully adjudicated, and that by reason thereof the proceedings herein are unauthorized by and are contrary to the established laws of the State of Illinois; and in consequence of the entry of said judgment of confirmation, the said courts have denied to each of the plaintiffs in error herein the rights, privileges and immunities guaranteed under and

22873

by virtue of the Constitution of the United States, and of said Fourteenth Amendment thereto.

25th. Said Supreme Court of Illinois erred in affirming said judgment, for the reason that it is the settled law of the State of Illinois, and the established construction of its constitution, that the ordinance of March 28, 1893, which was the ordinance by virtue of which said improvement is alleged to have been constructed, was absolutely void at the time the present proceedings were instituted; and said courts of the State of Illinois, by reason of the conclusions adopted by each thereof, have departed from said settled law of the State of Illinois in the matter under consideration, and each of said courts has attempted to impose the present burden upon the property of each of said plaintiffs in error, contrary to said established law, all of which is in contravention of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

GEORGE W. WILBUR,
Counsel for Plaintiffs in Error.

No. 201.

OFFICE SUPREME COURT of U.S.
RECEIVED
MAY 23 1901

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,

vs.

WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING, AND FOR AN ORDER STAYING EXECUTION.

Now on this day come the above named plaintiffs in error, by Goerge W. Wilbur, their counsel, and move the court for leave to file a petition for a rehearing in said cause, which petition is presented herewith.

And the said plaintiffs in error, by their counsel, further move the court to enter an order herein staying the execution of the judgment entered in said matter by this Honorable Court, pending the disposition of the question as to said petition for rehearing. In support of the latter motion, said plaintiffs in error call the attention of the court to said petition for rehearing.

Respectfully submitted.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

Chicago, May 21, 1901.

OFFICE SUPREME COURT U.S.
RECEIVED
MAY 23 1901

No. 201.

Petition for Rehearing.

Term No. 201. Gen. No. 17,639.

Filed May 23, 1901.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* vs. WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

PETITION FOR REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

GEORGE W. WILBUR,
COUNSEL FOR PLAINTIFFS IN ERROR.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

22877

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* vs. **WEST CHICAGO PARK COMMISSIONERS,** *Defendants in Error.*	Error to Supreme Court of the State of Illinois.

PETITION FOR REHEARING ON BEHALF OF PLAINTIFFS IN ERROR.

To the Honorable the Judges of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

After a careful examination of the opinion of the court in this cause, and after further inspection of the record and briefs herein, we cannot avoid the conclusion that some points, vital to the contention of the plaintiffs in error, may not have been called to the attention of the court in a manner worthy of their importance. For this reason I am constrained to ask the further indulgence of the court as to such matters.

As will be seen by the record and briefs in this cause, the issues under consideration have been the subject of more or less doubt on the part of the courts to which they have been presented, since the first contest of the assessment. As has been shown in previous documents in this case, the original ordinance under which the improvement was made was declared void by the Supreme Court of Illinois. The proceedings thereunder were then abandoned by the defendants in error, notwithstanding the order of the Supreme Court remanded the cause. A new assessment was then made under a law which went into effect two years after the commencement of the original proceedings, and after the improvement was completed. Upon motion in the County Court, where such new proceedings were pending, the petition was dismissed on the ground that the original ordinance had been declared void by the Supreme Court, and also because there was no law in Illinois authorizing a new assessment to collect for work done under a void ordinance. An appeal was taken from the order of dismissal, and the Supreme Court of Illinois thereupon modified its former opinion to a limited extent, and held that there was sufficient vitality or legality in the original proceedings, which it had previously declared to be void, to sustain a new assessment; at the same time that court declined to sustain an order of the trial court reducing the assessment as to certain property. As a result of the appeal, the finding of the trial court was reversed and the cause remanded for further proceedings. On such further proceedings before the County Court and a jury, a verdict and judgment were rendered against the objectors, from which an appeal was again taken to the Supreme Court, making the third appearance of the same matter before that court. On such appeal an opinion was rendered reversing the cause

and remanding it for further proceedings. The court in its opinion at this time, used the following language, and I trust there is no impropriety in my giving the quotation, as your honorable court has before it the record upon which such opinion was based:

"* * * Whatever rule may prevail elsewhere, it is the doctrine of this court that there is no presumption in favor of the validity of the ordinances of a municipal corporation exercising a delegated and limited power, and if they are challenged the authority for their passage must be shown. * * * In kindred matters, such as laying out roads and the like, where a petition is the basis of the proceedings, the existence of the petition is not presumed merely because the officers have acted.

* * * * *

It is said that grave results would follow if the commissioners would be required, after a lapse of time, to prove that they had authority for their action. But the rights of the property owner are important to him, and he is entitled to the equal protection of the law. It would be a grave result if he should be despoiled of his property against the prohibition of the statute, and the difficulties of proof by him would not be less than by the commissioners. We do not think it a harsh rule, or productive of disastrous results, that so long as the commissioners are seeking a confirmation of an assessment they should be prepared to show their authority. Presumably, the evidence upon which they acted is still in their possession. The motion should have been sustained.

In the next place, it is contended that appellants are estopped, on the question of authority, to charge their property with the expense of the work, because they stood by and saw the improvement made and money expended under the ordinance. * * * If that were the doctrine, the municipality might do any work without authority of law, and collect a tax to pay for it, on the mere ground that it had made a public claim of a right to do so. * * * To carry the doctrine to such an extent would do away with every protection which the law gives to a taxpayer against unauthorized acts.

There are some other minor questions discussed by counsel, but they may not arise on another hearing, and if

there should be a failure to prove the jurisdictional fact which lies at the foundation of the whole proceeding, they cannot arise at all. We do not deem it advisable to enter upon the consideration of them at this time.

For the reason given the judgment is reversed and the cause remanded."

After the rendition of the opinion, from which the above is taken, a petition for a rehearing was presented and allowed. Upon such rehearing the former conclusions were recalled in so far as they were not favorable to the present defendants in error, and an opinion rendered in lieu thereof, which is a part of the record herein, and which is the basis of the present writ of error.

The opinion which controls in this case rests upon two or three decisions in other cases, wherein certain points, common to the matters in controversy in the case at bar, were considered and disposed of. As is true in probably each case, there are a number of points herein which, to us, seem to be important, and which are not found in the cases where opinions were written.

I.

AS TO THE CHARACTER OF THE IMPROVEMENT.

As will be seen by the record and briefs now before the court, Douglas boulevard is a boulevard extending from Douglas Park to Garfield Park, being a connecting link between those parks, and that it is a part of the park system of Chicago. It is 250 feet wide, and consists of a center lawn which, on the plans, was to be 130 feet wide; one asphalt and one granite roadway on each side of the center lawn, and each forty feet wide; a concrete walk eight feet wide, and side lawns twelve feet wide on the outer sides of the boulevard, and for its whole length.

The record shows that this right of way, 250 feet wide, is a part of the park system, and it is owned and controlled in the same manner as the parks within the district under the jurisdiction of the defendants in error.

This boulevard is strictly a pleasure-way, with restrictions as to traffic, except for pleasure vehicles. We have always contended in this litigation, and now insist, that, under such circumstances, the large territory involved in this boulevard should be treated by defendants in error as park property, and it should be improved from the same fund. The inconsistency of the assessment is made to appear when we inspect the plans of the improvement, which appear in the printed record after page 60. What advantage comes to the owner of property on one side of the boulevard by reason of a roadway forty feet wide on the other side of such boulevard? He cannot reach it, even if he desired so to do, except at certain openings which are separated from each other at a considerable distance. Yet each roadway, each concrete walk and each side lawn are elements of cost in the assessment. Under ordinary circumstances, where a roadway is to be improved by a special tax or special assessment, the property abutting on each side of such roadway is subjected to the burden of the cost. That rule has not been applied in this case. While the center lawn of 130 feet, under the ownership and control of the defendants in error, extends and abuts on each side of each roadway for their entire length, no portion of the tax is assumed by the defendants in error. The effect of this peculiar and unjust charge is to compel the abutting owners to pay for the cost of the improvement of the entire sixty feet each side of the centre lawn of 130 feet. With equal propriety could the defendants in error call upon the owners of property

abutting on a park to pay for the entire cost of constructing roadways or other improvements in such parks, while the general public, which enjoys the parks and boulevards, may do so without money and without price—or taxation. The plaintiffs in error herein contend that the method adopted by the defendants in error, for the purpose of obtaining the cost of the improvement, is unjust as between the plaintiffs in error and the general public, and that such injustice is, as to them, a denial of the protection to which they are entitled under the laws of the United States.

II.

AS TO A FRONTAGE ASSESSMENT.

It seems to be conceded in the opinions governing this case that the assessment is made under the front foot rule, but that the conclusions reached in *Norwood* v. *Baker* are not applicable. The latter decision has been so fully discussed in the various cases under consideration, that I will do no more than to make a short citation therefrom, which is found on page 294 (*Norwood* v. *Baker*, 172 U. S., 269):

"* * * The decree does not prevent the village, if it has or obtains the power to that end, from proceeding to make an assessment in conformity with the view indicated in this opinion, namely: That while abutting property may be specially assessed on account of the expense attending the opening of a public street in front of it, *such assessment must be measured or limited by the special benefits accruing to it; that is, by benefits that are not shared by the general public;* and that taxation of the abutting property for any substantial excess of such expense over special benefits will, to the extent of such excess, be a taking of private property for public use without compensation."

As the opinion of the court herein does not expressly

overrule the *Norwood* case, but seems to hold that it does not apply to the facts shown by the various records, we ask the court to consider the above quotation in regard to the case at bar. Here is a boulevard for the use of the general public as a pleasure-way, with an assessment for its improvement, amounting to more than $250,000, of which amount the general public is called upon to pay the paltry sum of $241.99. The defendants in error thus recognize that there are benefits (?) to the public, and at the same time determine that such benefits are only nominal. The plaintiffs in error claim that this is an unjust discrimination, and that the fact is too patent to require either evidence or argument to sustain it. Applying the rule as shown in the above quotation, the only conclusion to be deducted is, that the defendants in error acted either unfairly or ignorantly in arriving at the public benefits to be derived from the improvement in question, and, in either event, the results are the same as to the plaintiffs in error. We are confident that a great injustice has been done the plaintiffs in error in this regard, and for this reason we feel that the action of the defendants in error should not receive the approval of this court.

III.

AS TO THE CONSENTING PETITION.

As is shown on page 21 of the reply brief herein, and as appears by the petition and ordinance under which the improvement was constructed, and by the act of 1873, for the improvement of parks and boulevards, a consenting petition, signed by a majority of the owners of property abutting on the proposed improvement, was necessary in order to authorize the making of such improvement. The

Supreme Court of Illinois, upon second thought, after once having determined to the contrary, states:

"The ordinance recites that said corporate authorities, upon official investigation, found the petition contained the signatures of the owners of a majority of the land fronting on said Douglas boulevard so proposed to be improved. This recitation was also properly recitable in evidence as *prima facie* proof of the facts recited."

We contend that this statement, even if true, is not sufficient under the law to establish the fact that a legal consenting petition was obtained, for several reasons, one of which is that if an owner, after having signed a petition, were to dispose of his property before the petition was acted upon, then such sale would be a revocation of the license given with his consent.

We feel justified in asserting that, in the absence of a consenting petition, the park board had no right to act, and that it was the duty of the court to require the park commissioners to show affirmatively, when the matter was controverted in the pleadings, that they did have a consenting petition, signed by a majority of the owners of the land fronting on the proposed improvement at the time such petition was acted upon, and also to show that such consenting petition authorized the construction of an improvement similar, in general terms, to the one provided for in the ordinance. It is not difficult to obtain signatures to a consenting petition, either as a matter of favor or for a consideration, and unscrupulous persons, not owning property, would be willing to sign through one or the other of the above motives. By so doing they would inflict a burden upon property owners which, under the law, would not be justified. For this reason we contend that the defendants in error should have been required to show affirmatively that they had a consenting petition signed

in the manner required by the statute; and on account of a failure so to do, we feel that the plaintiffs in error herein have been deprived of their just rights under the laws of the State of Illinois, and that such deprivation is, in effect, a denial of the protection secured to them by the Fourteenth Amendment to the constitution of the United States.

IV.

THE IMPROVEMENT AS CONSTRUCTED IS NOT IN ACCORDANCE WITH ANY ORDINANCE.

We wish again to call the attention of the court to the fourth point made in our reply brief herein, and referred to in the original brief. It is shown by the record that the improvement, as constructed, is not in accordance with the ordinance under which the defendants in error claim to have acted in making the improvement. It is also contended that such variation is material and that it injuriously affects the property of the plaintiffs in error. The law of Illinois requires that, before the improvement is constructed, the proper authorities must pass an ordinance, which ordinance shall set forth the nature, character, locality and description of the proposed improvement. The ordinance under consideration fails in this respect.

In *Church* v. *The People*, 174 Ill., 366, and cited in our reply brief, this question is passed upon. We contend that the plaintiffs in error, by reason of the failure of the defendants in error to construct the improvement provided for in the ordinance, are deprived of their just rights under the laws of Illinois and under the constitution of the United States.

V.

AS TO THE COST OF THE IMPROVEMENT.

The record shows that the amount of the assessment levied for the purpose of paying for the improvement is $250,207.20. The affidavit of Dorr, the superintendent who constructed such improvement, shows that the actual cost of the improvement was $195,239.21, or $54,967.99 less than the amount shown by the estimate and by the assessment. As this matter is undisputed, we claim the plaintiffs in error will be deprived of a large amount of money, that is, the excess of the assessment over the actual cost of the improvement, if the rulings of the courts of Illinois are allowed to remain in force. (Pr. Rec., 61; reply brief, 25.)

VI.

AS TO FRONTAGE ASSESSMENT.

This is the main point discussed and passed upon in the opinions herein. While it was insisted upon on behalf of plaintiffs in error, yet, as said in the previous portion of this petition, it is not the only point wherein we believe that the plaintiffs in error have been denied the rights to which they are entitled under the laws of Illinois and by the constitution of the United States.

Great consideration has been given by your Honorable Court to the scope and effect of the opinion in *Village of Norwood* v. *Baker*, 172 U. S., 269. As stated above, I will not presume to discuss that authority. I trust, however, there may be no impropriety in citing the following extracts

from the dissenting opinion of Mr. JUSTICE HARLAN, in *French* v. *Barber Asphalt Paving Company:*

"Does the court intend in this case to overrule the principles announced in *Norwood* v. *Baker?* Does it intend to reject as unsound the doctrine that 'the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement?' Is it the purpose of the court, in this case, to overrule the doctrine that taxation of abutting property to meet the cost of a public improvement—such taxation being for an amount in substantial excess of the special benefits received—'will, *to the extent of such excess,* be a taking of private property for public use without compensation?' The opinion of the majority is so worded that I am not able to answer these questions with absolute confidence. It is difficult to tell just how far the court intends to go. But I am quite sure, from the intimations contained in the opinion, that it will be cited by some as resting upon the broad ground that a legislative determination as to the extent to which land abutting on a public street may be specially assessed for the cost of paving such street is conclusive upon the owner, and that he will not be heard, in a judicial tribunal or elsewhere, to complain even if, under the rule prescribed, the cost is in substantial excess of any special benefits accuring to his property, or even if such cost equals or exceeds the value of the property specially taxed. The reasons which, in my judgment, condemn such a doctrine as inconsistent with the constitution are set forth in *Norwood* v. *Baker,* and need not be repeated. But I may add a reference to some recent adjudications.

"In *Sears* v. *Boston,* 173 Mass., 71, 78, which was the case of a special assessment to meet the cost of watering streets, the court said: 'It is now established by the highest judicial authority that such assessments cannot be so laid upon any estate as to be in substantial excess of the benefit received. The case of *Norwood* v. *Baker,* 172 U. S., 269, contains an elaborate discussion of the subject, with a citation of authorities from many of the states, and holds that a local assessment for an amount in substantial excess of the

benefits received is in violation of the Fourteenth Amendment of the Constitution of the United States, inasmuch as it would deprive one of his property without compensation, and so without due process of law. The authority of this case is controlling in all State courts, and if it were not, *it is in accordance with sound principle*, and with great weight of authority in other courts. The principles which have often been stated by this court lead to the same result. *Boston* v. *Boston & Albany Railroad*, 170 Mass., 95, 101, and cases cited.' * * * In *Dexter* v. *Boston*, 176 Mass., 247, 251, 252, the court said: 'It is now settled law in this court, as it is in the Supreme Court of the United States, and in many other courts, that after the construction of a public improvement a local assessment for the cost of it cannot be laid upon real estate in substantial excess of the benefits received by the property. Such assessments must be founded on the benefits, and be proportioned to the benefits.' (A number of cases are cited.)

* * * * *

"The court, after referring to the declaration of the Supreme Court of Missouri to the effect that the Fourteenth Amendment was not applicable to this case, proceeds, in order to 'prevent confusion and relieve from repetition,' to refer to some of the cases arising under that and the Fifth Amendment. In the same connection the court, referring to the Fifth and Fourteenth Amendments, says that, 'while the language of those Amendments is the same [in respect of the deprivation of property without due process of law], yet as they were engrafted upon the Constitution at different times and in widely different circumstances of our national life, it may be that questions may arise in which different constructions and applications of their provisions may be proper.' As the court expressly declines to formulate any rule to determine for all cases 'what it is for a State to deprive a person of life, liberty or property without due process of law,' I will not enter upon a discussion of that question, but content myself with saying that the prohibition against the deprivation of property without due processs of law cannot mean one thing under the Fifth Amendment and another thing under the Fourteenth Amendment, the words used being the same in each Amendment. If the court intends to

intimate the contrary in its opinion, I submit that the intimation is not sustained by any former decision, and is not justified by sound principle.

* * * * *

"I agree with the court in saying that Cooley and Dillon are text-writers of high authority for learning and accuracy. But I cannot agree that the extracts from their Treatises found in its opinion correctly or fully state their views upon the particular question now before us.

"The declaration by the court that the decision in *Norwood* v. *Baker* was placed upon the ground that the burdens imposed upon Mrs. Baker's property amounted to *confiscation* is, I submit, an inadequate view of our decision. The word 'confiscation' is not to be found in the opinion in that case. The affirmance of the judgment in that case was upon the sole ground that the assessment was made under a *rule* that absolutely *excluded* any *inquiry as to special benefits.* Such a rule was held to be void, because it rested upon the theory that to meet the cost of opening a street private property could be specially assessed for an amount in substantial excess of special benefits accruing to it from the improvement made in the interest of the general public.

"If it may be inferred from what is said in the opinion of the court in this case that a special assessment resulting in the *confiscation* of the entire property assessed might not be sustained, I have to say that manifestly confiscation does occur when the property specially assessed is all taken to meet the cost of a public improvement supposed to be specially beneficial to the owner. So, if the property is assessed beyond the special benefits accruing, there is confiscation *to the extent of such excess.* But if confiscation, in any form, will not be tolerated, what becomes of the broad declarations in the opinions in some of the cited cases to the effect that the legislature may prescribe the extent to which private property is specifically benefited by a local public improvement, and that its action in that respect cannot be questioned by the owner of the property assessed, even if it appeared that the amount assessed exceeded the special benefits, or even if it appeared that the cost of the improvement exceeded the value of the property assessed? Are we to understand from the in-

terpretation now placed upon the decision in *Norwood* v. *Baker* that the courts may, for the protection of the property owner, interfere when a legislative determination amounts to confiscation pure and simple, but that they cannot interfere when the amount assessed is in substantial excess of the benefits received?

* * * * *

"* * * If it be true that the only ground upon which a special assessment can be legally imposed upon particular private property to meet the cost of a public improvement is that such property receives, or may reasonably be held to receive, special benefits not shared by the general public—and no one, I take it, will dispute the soundness of that principle—and if it be true that the property cannot be made to bear a proportion of such costs in substantial excess of special benefits, it necessarily follows that the owner of the property is entitled to protection against any legislative rule or requirement that puts upon his property a burden greater than can be lawfully imposed upon it. How can he obtain such protection except through the courts? To say that he cannot do so is to say that the legislature possesses an absolute unlimited power over rights of property which is inconsistent with the supreme law of the land. Is it to become a canon of constitutional construction that the courts may interfere when the legislature authorizes a special assessment that will amount to the confiscation of the entire property assessed, but will not interfere when the confiscation is only to a limited, although a material, extent? In other words, is there to be a difference, so far as the powers of the courts are concerned, between confiscation, under the guise of taxation, of the entire property of the citizen and confiscation of only a part of it?

* * * * *

In my opinion the judgment in the present case should be reversed upon the ground that the assessment in question was made under a statutory *rule* excluding all inquiry as to special benefits and requiring the property abutting on the avenue in question to meet the entire cost of paving it, even if such cost was in substantial excess of the special benefits accruing to it; leaving Kansas City to obtain authority to make a new assessment upon the abutting

property for so much of the cost of paving as may be found upon due inquiry to be not in excess of the special benefits accruing to such property. Any other judgment will, I think, involve a grave departure from the principles that protect private property against arbitrary legislative power exerted under the guise of taxation."

In conclusion, I respectfully suggest that, under the circumstances appearing in the record herein, and owing, also, to the various views which have been entertained by the courts of Illinois in regard to the matters under consideration in this assessment, there may be some ground for doubt as to the correctness of the conclusion finally reached by the trial court. I feel confident that, as to some matters, upon further consideration by your Honorable Court, you will be of the opinion that the plaintiffs in error herein have not been accorded the full measure of the rights to which they are entitled under the laws of Illinois and the constitution of the United States. Some of these matters are briefly stated herein.

It probably will not be disputed that the defendants in error will suffer no great loss or damage if this cause were to be remanded to the trial court of Illinois for the purpose of further investigation as to the question of the consenting petition; as to the failure to construct the improvement provided for in the ordinance; as to the amount of the assessment, which is largely in excess of the cost of the improvement, and as to the constitutionality and legality of a new special assessment proceedings to collect for work done undera void special tax proceedings. I might add here, although possibly not in its proper order, that, prior to the rendition of the opinions of the Supreme Court of Illinois in regard to the Douglas Boulevard improvement,

the law was that a new assessment could not be made to collect for work done under a void original proceedings. In the *Culver* case, the ordinance under which this improvement is claimed to have been constructed, was declared *void* by that court. As a void ordinance is of no force and effect whatever in any place or under any circumstances, then the work was constructed without the sanction of any ordinance, and such construction became thereby a voluntary act on the part of the defendants in error herein, and they are, therefore, without legal authority to carry on any assessment to collect for the cost of the improvement.

As intimated above, if the finding of your Honorable Court herein is reconsidered, and if, under the record and authorities cited, you can reach a conclusion that this matter should receive further attention from the courts of Illinois, such conclusion certainly would work no harm to the defendants in error, and would undoubtedly save to the plaintiffs in error rights which I am confident should be accorded them.

For the foregoing reasons the plaintiffs in error respectfully pray this Honorable Court to grant them a rehearing of said cause.

GEO. W. WILBUR,
Counsel for Plaintiffs in Error.

I, George W. Wilbur, counsel for plaintiffs in error herein, do hereby certify that, in my judgment, the foregoing petition for rehearing is well founded, and that the same is not interposed for delay.

Geo. W. Wilbur
Counsel for Plaintiffs in Error.

Chicago, May 20, 1901.

Office Supreme Court U.S.
FILED
MAY 17 1900
JAMES H. McKENNEY.
Clerk

Fo. 201

Br. of Riddle for D. C.

Filed May 17, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 525.

THOMAS F. FARRELL ET AL., PLAINTIFFS IN ERROR,

vs.

WEST CHICAGO PARK COMMISSIONERS.

SUGGESTIONS ON BEHALF OF THE DEFENDANT IN ERROR IN RESPONSE TO MOTION MADE BY PLAINTIFFS IN ERROR FOR RULE TO SHOW CAUSE WHY DEFENDANT IN ERROR SHOULD NOT BE PUNISHED FOR CONTEMPT.

FRANCIS A. RIDDLE,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 5-16-1900

22886

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 525.

THOMAS F. FARRELL ET AL., PLAINTIFFS IN ERROR,

vs.

WEST CHICAGO PARK COMMISSIONERS, DEFENDANT IN ERROR.

Motion Made by Plaintiffs in Error for Rule to Show Cause why Defendant in Error Should not be Punished for Contempt.

Suggestions on Behalf of Defendant in Error.

STATEMENT.

This is a motion made on behalf of plaintiffs in error for a rule to be entered in the above-entitled cause requiring The West Chicago Park Commissioners, defendant in error, to show cause why it should not be punished for a contempt

of this court. The motion filed on behalf of the plaintiffs in error is in the following language:

"Now on this day come the above-named plaintiffs in error by George W. Wilbur and Newton A. Partridge, their counsel, and move the court that a rule be entered herein, that said defendants in error and each of them show cause why they should not be punished for contempt in violating the orders of said court and the statutes of the United States in attempting to collect the special assessment involved in said proceedings" (page 1 of printed motion of plaintiffs in error).

The West Chicago Park Commissioners is a quasi-municipal corporation and a public body politic incorporated under the statute of the State of Illinois approved and in force February 27, 1869 (sec. 3, Private Laws of Ill. 1869, vol. 1, p. 343).

Wilcox *et al. vs.* People *ex rel.*, 90 Ill., 186.

And the legal designation of the defendant in error in the above-entitled cause is "West Chicago Park Commissioners" (Private Laws of Ill. 1869, p. 342, sec. 2).

The same act authorized a board of park commissioners, seven in number, to be appointed by the governor of the State of Illinois and confirmed by the senate. The seven members so appointed by virtue of the provisions of said act manage and direct the business and affairs of said "West Chicago Park Commissioners," a quasi-municipal corporation. Under the act above cited and supplemental acts of the Illinois legislature the "West Chicago Park Commissioners" commenced in 1896 proceedings for the levy and collection of a special assessment, pursuant to the provisions

of the laws of Illinois in that behalf, to pay the cost of the improvement of Douglas boulevard from Garfield park to Douglas park, in the city of Chicago, county of Cook and State of Illinois. These proceedings were commenced in the county court of Cook county, and in due time the proceedings so begun were held to be valid, and the order of confirmation by the county court of Cook county was, on October 13, 1899, affirmed by the supreme court of Illinois, and a final judgment order to that effect was entered on the 13th of October, 1899, in said supreme court. From that final judgment of the supreme court of Illinois the plaintiffs in error in the above-entitled cause sued out, on the 23d day of January, 1900, the writ of error now pending in this court in this cause. It is manifest from a casual reading of the motion now under consideration that the counsel for plaintiffs in error had in their minds, when they framed such motion, that "West Chicago Park Commissioners" was not an individual corporate entity, but that the legal designation of such corporate entity—"West Chicago Park Commissioners"—included the individual members of the Board of West Chicago Park Commissioners. However this may be, no complaint is made that any natural person or any members of the Board of West Chicago Park Commissioners, or any officer or employé of the West Chicago Park Commissioners, has violated any rule or order of this court in any respect whatever.

It will not appear from the petition filed in this cause in support of the motion for the rule to show cause that any complaint is made against, or any act charged as having been committed by, any member, officer, or employé of "West Chicago Park Commissioners" which can in any

way be the basis of proceedings for contempt against them as such officers or employees. In the petition counsel for plaintiffs in error say:

"Subsequent to the service of said citation said defendants in error returned the real estate of your petitioner and his coplaintiffs in error, as delinquent, to the county treasurer and *ex officio* collector of the county of Cook, etc."

Inasmuch as there is but one defendant in error in the present proceeding, the language above quoted from the petition of the plaintiffs in error must be construed to mean the municipal corporation known and designated as "West Chicago Park Commissioners," and cannot be construed as a charge or complaint made against any member or members of the board of "West Chicago Park Commissioners" or as against any officer or employee of "West Chicago Park Commissioners." Manifestly, a municipal or quasi-municipal corporation cannot be the subject of punishment as for a contempt in any court. In order to inflict upon any individual or natural person punishment as for a contempt of court, the individual charged as being guilty must be brought before the court in his own proper person, and by proper proceedings.

The several affidavits filed in support of the motion are alike deficient in affirming that any individual member, or that any officer or employee of "West Chicago Park Commissioners," the defendant in error herein, have been guilty of any act, step, or proceeding which can be made the subject of punishment for contempt.

The claim is made, however, that the "West Chicago Park Commissioners," manifestly meaning the quasi-mu-

nicipal corporation known as such under the laws of Illinois, has made a return of the real estate owned by the several plaintiffs in error to the county treasurer and *ex officio* collector of Cook county, Illinois, showing to the latter officer that the lots and lands of the plaintiffs in error are delinquent as not having paid the amount of the special assessment, levied as aforesaid against the lots and lands of plaintiffs in error respectively to pay the cost of the improvement of said Douglas boulevard. No part of any such return, if any was ever made by "West Chicago Park Commissioners" or by any officer or employee of said park commissioners, is before the court, and your honors are asked to infer from meager and very general affirmations found in the petition and affidavits in support thereof that some return of lots and lands of plaintiffs in error has been made to the county collector of Cook county, which is a violation of a restraining order or supersedeas and which counsel for plaintiffs in error claim necessarily resulted and became effective on the 23d day of January, 1900, when the writ of error was sued out from this court from the final judgment of the supreme court of the State of Illinois, entered therein on October 13, 1889. (See Farrell *vs.* West Chicago Park Commissioners, 182 Ill., 250, and also Record in this cause, pp. 251, 252.)

It is not deemed necessary to notice seriously the fact that some time subsequent to the date of entry of the final judgment on October 13, 1899, in the supreme court of Illinois, to correct which the writ of error now pending in this court was sued out, a petition for rehearing was filed by plaintiffs in error in said supreme court of Illinois and subsequently denied by the latter tribunal. No judgment

of any kind was entered in the supreme court of Illinois on December 11, 1899, and the formal order denying the petition for rehearing, which had been filed by the plaintiffs in error, left the final judgment of the supreme court of Illinois in full force and effect as of the 13th day of October, 1899. Counsel are manifestly in error in stating, as they do in their abstract of the record filed in support of the present motion, that the judgment of the supreme court of Illinois was on October 30, 1899, and that the opinion of the supreme court of Illinois was also filed October 30, 1899 (Abstract, p. 3). Both the final judgment of the supreme court of Illinois and the opinion of that court were filed on October *13*, 1899 (Farrell *vs.* West Chicago Park Commissioners, 182 Ill., 250; Record, pp. 251, 252). Counsel have doubtless confused in their minds the *30th* day of October with the *13th* day of October, 1899.

The time within which the plaintiffs in error had the right to sue out a writ of error and have the same operate as a stay order or supersedeas began to run on the 13th day of October, 1899. Forty days of that time had run against the right of the plaintiffs in error to sue out their writ and have it made a supersedeas on the 22d day of November, when the stay order was granted by the chief justice of the supreme court of Illinois directing a stay of proceedings until the petition for rehearing filed in the latter court should have been determined. The petition for rehearing was denied on December 11, 1899, and from December 11 to January 23, 1900, 44 days had elapsed; so taking out the number of days which it may be insisted should be excluded from the time within which the plaintiffs in error had the right to sue out their writ, *84 days* had elapsed

within which no order of any court whatever or of any kind or character prevented the plaintiffs in error from pursuing their right to sue out the writ of error now pending in this cause. The writ should have been sued out within 60 days, exclusive of Sundays, from the date of the rendition of the final judgment sought to be reviewed in order to have the writ operate as a supersedeas or stay order restraining the defendant in error from taking such steps as the law authorizes for collecting the special assessment aforesaid. It will thus be seen that the plaintiffs in error lost the right to have the writ of error operate as a supersedeas by failing to sue out the writ within the time allowed by law. This loss was the result of their own laches and was not the fault of any court or judge.

I.

Suggestions on Behalf of Defendant in Error Why the Motion of the Plaintiffs in Error Should be Denied.

"The service of a writ of error or the perfection of an appeal within 60 days, Sundays exclusive, after the rendition of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a supersedeas and it is not within the power of a justice or judge of the appellate court to grant a stay of process on the judgment or decree if this has not been done" (Kitchen *vs.* Randolph, 3 Otto, 86).

This doctrine is affirmed in Pugh *vs.* Davis, 110 U. S., 227. To the same effect is Sage *et al. vs.* The Central Railroad Co. of Iowa, 412, where this court say: "A supersedeas

is a statutory remedy. It is only obtained upon a strict compliance with all the required conditions, none of which can be dispensed with." Hogan *vs.* Ross, 11 Howard, 297; R. R. Co. *vs.* Harris, 7 Wall., 575.

"Time is an essential element in the proceeding and one which neither the court nor the judge can disregard. If a delay beyond the limited time occurs the right to the remedy is gone and the successful party holds his judgment or decree free and discharged from this means of staying proceedings for its collection or enforcement. This is a right which he has acquired and of which he cannot be deprived without due process of law. The court can no more give effect to a supersedeas by ordering that the appeal shall relate back to the time within the sixty days, than it can to an appeal begun after the expiration of two years by dating it back to a time within the limitation. To make a *nunc pro tunc* order effectual for such purposes, it must appear that the delay was the act of the court and not of the parties, and that injustice will not be done" (Sage *vs.* Central R. R. Co., 3 Otto, 412).

It would seem to be manifest that no other argument or suggestion is necessary to show conclusively that the right of the plaintiffs in error to sue out the writ in the above-entitled cause, and have the same made to operate as a supersedeas, expired long before January 23, 1900, when it was in fact sued out, and the following day lodged in the office of the clerk of the supreme court of Illinois, where the record is kept.

II.

The record fails to show when the bond required to be filed by the plaintiffs in error was in fact, if ever, filed. There is what purports to be a bond contained in the transcript of the record certified by the clerk of the supreme court of Illinois, and there appears also in the transcript an affidavit of George W. Wilbur, sworn to on January 27, 1900, with an order entered thereupon by the chief justice of the supreme court of Illinois on January 29, 1900, allowing one *Michael Hennigan* to insert his name in and to sign the bond as a principal, which was accordingly, as the record shows, done.

In other words, some of the plaintiffs in error, it may be presumed, had signed, sealed, executed, and filed a bond some time between January 23 and January 27, 1900; that after such bond had been duly executed and filed with the clerk of the supreme court of Illinois, counsel for plaintiffs in error wished to add another property-owner, whose property had been assessed for the cost of said improvement, to the already large number of plaintiffs in error in this cause, and accordingly, without the consent of the principals or the surety upon the bond, which had already been executed and filed, the name of Michael Hennigan was inserted in the body of the bond and his name signed thereto as one of the principals of said bond. This action rendered the bond, a copy of which is contained in the transcript of the record in this cause, absolutely invalid.

In Newlan *vs.* Harrington, 24 Ill., 207, Judge Breese, in writing the opinion of the court, says:

"It is a familiar rule that a guarantor is not liable beyond the express terms of his undertaking, * * * and it is not good policy to permit a party interested in such papers to alter them."

Newlan *vs.* Harrington, 24 Ill., 207.

By the insertion of Hennigan's name in the so-called bond filed by plaintiffs in error in this cause, the liability of the surety was increased without the surety's consent, and thereby the whole bond was rendered nugatory. A recovery by defendant in error upon said bond would be denied.

Chilton *vs.* People, 66 Ill., 507.

The bond in proceedings like the present now before the court is an essential adjunct to a writ of error if it is proposed to make the writ a supersedeas, even if such writ be sued out within the time allowed by law. The order of the chief justice of the supreme court of Illinois allowing the bond to be amended after it had been duly executed and filed could in no way prevent the insertion of the name of Michael Hennigan in the body of the said bond from making it wholly invalid.

The counsel for plaintiffs in error, in their brief filed in support of their motion, say:

"The practice seems to be so well established and the statutes covering such cases are so plain that citation of authorities would possibly be out of place."

(This view of counsel for plaintiffs in error seems to be verified by their citation of Booth *vs.* Tiernan, 109 U. S., 205.)

It will be evident to your honors that Booth *vs.* Tiernan,

supra, is wholly "out of place" as an authority to support the motion of the plaintiffs in error.

It is perfectly clear to your honors that the present motion should be denied, first, because the writ of error was not sued out in apt time; and, second, because no valid bond has been given by the plaintiffs in error to indemnify the defendant in error either for costs or damages.

Respectfully submitted.

FRANCIS A. RIDDLE,
Counsel for Defendant in Error.

22892

Office Supreme Court U. S.
FILED
OCT 8 1900
JAMES H. McKENNEY,
Clerk.

No. 201.

Br. of Riddle for D. C. Com mo

Filed Oct. 8, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. ~~528~~. 201

THOMAS F. FARRELL ET ALS.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Motion of Defendant in Error to vacate the Supersedeas Order granted on the suing out of the Writ of Error in this cause.

SUGGESTIONS AND BRIEF IN SUPPORT OF SAID MOTION.

F. A. RIDDLE,
ATTORNEY FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 325.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* **WEST CHICAGO PARK COMMISSIONERS,** *Defendant in Error.*	Error to the Supreme Court of Illinois.

This day comes the above named West Chicago Park Commissioners, defendant in error, by Francis A. Riddle, its attorney, and moves the Court to vacate the supersedeas order granted upon the issuing out of the writ of error in said cause.

FRANCIS A. RIDDLE,

Attorney for Defendant in Error.



22894

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 525.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Motion of Defendant in Error to vacate the Supersedeas Order granted on the suing out of the Writ of Error in this cause.

Suggestions and Brief in support of said Motion.

This is a motion made on behalf of the defendant in error, West Chicago Park Commissioners, to vacate the supersedeas order granted at the time of the issuing out of the writ of error in said cause.

In support of said motion it is insisted that the supersedeas order never had any legal existence and that it was issued without authority, and was when issued and has ever since been without any force or effect.

The final judgment from which the writ of error was sued out from the Supreme Court of Illinois was rendered on the 13th day of October, 1899, *Farrell* v. *West Chicago Park Commissioners*, 182 Ill., 250.

The judgment so entered on that day still remains unreversed and in full force and effect.

The judgment so entered in the Supreme Court was the final judgment of that court in the cause from which the writ of error was sued out.

Sholty v. *McIntyre, Admr.*, 136 Ill., 133.
Lester v. *People*, 150 Ill., 150.
Klein v. *Charles L. Boyd, Receiver*, 169 Ill., 325.

THE WRIT OF ERROR UNDER THE STATUTES OF THE UNITED STATES, AND UNDER THE DECISION OF THE SUPREME COURT OF THE UNITED STATES, SHOULD HAVE BEEN SUED OUT AND A COPY LODGED IN THE CLERK'S OFFICE, WHERE THE RECORD OF THE FINAL JUDGMENT WAS KEPT, WITHIN SIXTY DAYS, EXCLUSIVE OF SUNDAYS, FROM AND AFTER THE DATE OF THE ENTRY OF THE FINAL JUDGMENT.

> "The service of a writ of error, or the perfection of an appeal within sixty days, Sundays exclusive, after the rendition of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a supersedeas, and * * * it is not within the power of a justice or judge of the Appellate Court to grant a stay of process on the judgment or decree, if this has not been done."
>
> *Kitchen* v. *Randolph*, 3 Otto, 86.

This doctrine is affirmed in *Peugh* v. *Davis*, 110 U. S., 227.

To the same effect is the case of *Sage et al.* v. *The Central Railroad Company of Iowa et al.*, 3 Otto, 412, where this court say:

> "A *supersedeas* is a statutory remedy. It is only obtained with a strict compliance with all the required conditions, none of which can be dispensed with. *Hogan* v. *Ross*, 11 Howard, 297. *R. R. Co.* v. *Harris*, 7 Wall., 575. Time is an essential element in the proceeding, and one which neither the court nor the judges can disregard. If a delay beyond the limited time occurs the right to the remedy is gone, and the successful party holds his judgment or decree free and discharged from this means of staying proceedings for its collection or enforcement. This is a right which he has acquired and of which he cannot be deprived without due process of law. The court can no more give effect to a supersedeas by ordering that the appeal shall relate back to a time

> within the sixty days than it can to an appeal begun after the expiration of two years by dating it back to a time within the limitation. To make a *nunc pro tunc* order effectual for such purposes it must appear that the delay was the act of the court, and not of the parties, and that injustice will not be done."
>
> *Sage* v. *Central R. R. Co.*, 3 Otto, 412.

The precise question has been recently passed upon by the Circuit Court of Appeals for the First Circuit.

In *New England Railroad Co.* v. *Hyde*, Mr. Justice Brown, speaking to that court, says:

> "After the expiration of sixty days, application was made to the Circuit Judge for approval of the bond, and for an order superseding the judgment, whereupon the following order was entered: 'Denied, because at the present time neither the Circuit Court nor any judge thereof has power to allow a supersedeas.' We think it clear that this ruling was correct.
>
> *Kitchen* v. *Randolph*, 93 U. S., 86.
>
> *Sage* v. *Railroad Co.*, 93 U. S., 417.
>
> *New England Railroad Co.* v. *Hyde*, 101 Fed. Rep., 397.

To the same effect is *Logan* v. *Goodwin et al.*, decided in the Circuit Court of Appeals for the Eighth Circuit, and reported as *Logan* v. *Goodwin et al.*, 101 Fed. Rep., 654. In that case there were two motions, one to dismiss the writ of error, and the other to vacate the supersedeas. And the court there say:

> "The motion to vacate the supersedeas is doubtless well taken. In *Kitchen* v. *Randolph*, 93 U. S., 86, it was held by the Supreme Court (construing Sec. 1007 of the Revised Statutes) that unless an appeal is perfected, or a writ of error sued out and served within sixty days, Sundays inclusive, after the ren-

22896

dition of the decree or judgment complained of, it is not within the power of a justice of the Supreme Court to allow a supersedeas."

The motion to vacate the supersedeas was allowed.

Logan v. *Goodwin*, 161 Fed. Rep., 654.

It is manifest that the right of the plaintiffs in error to sue out the writ of error in the above entitled cause and have the same made to operate as a supersedeas, expired on the 22d day of December, 1899, and that between the 13th day of October and the 23d day of December, 1899, sixty full days had elapsed, excluding Sundays. It appears from the record now before this court that the writ of error was not sued out until the 23d or 24th of January, 1900, and was therefore not entitled to operate as a supersedeas.

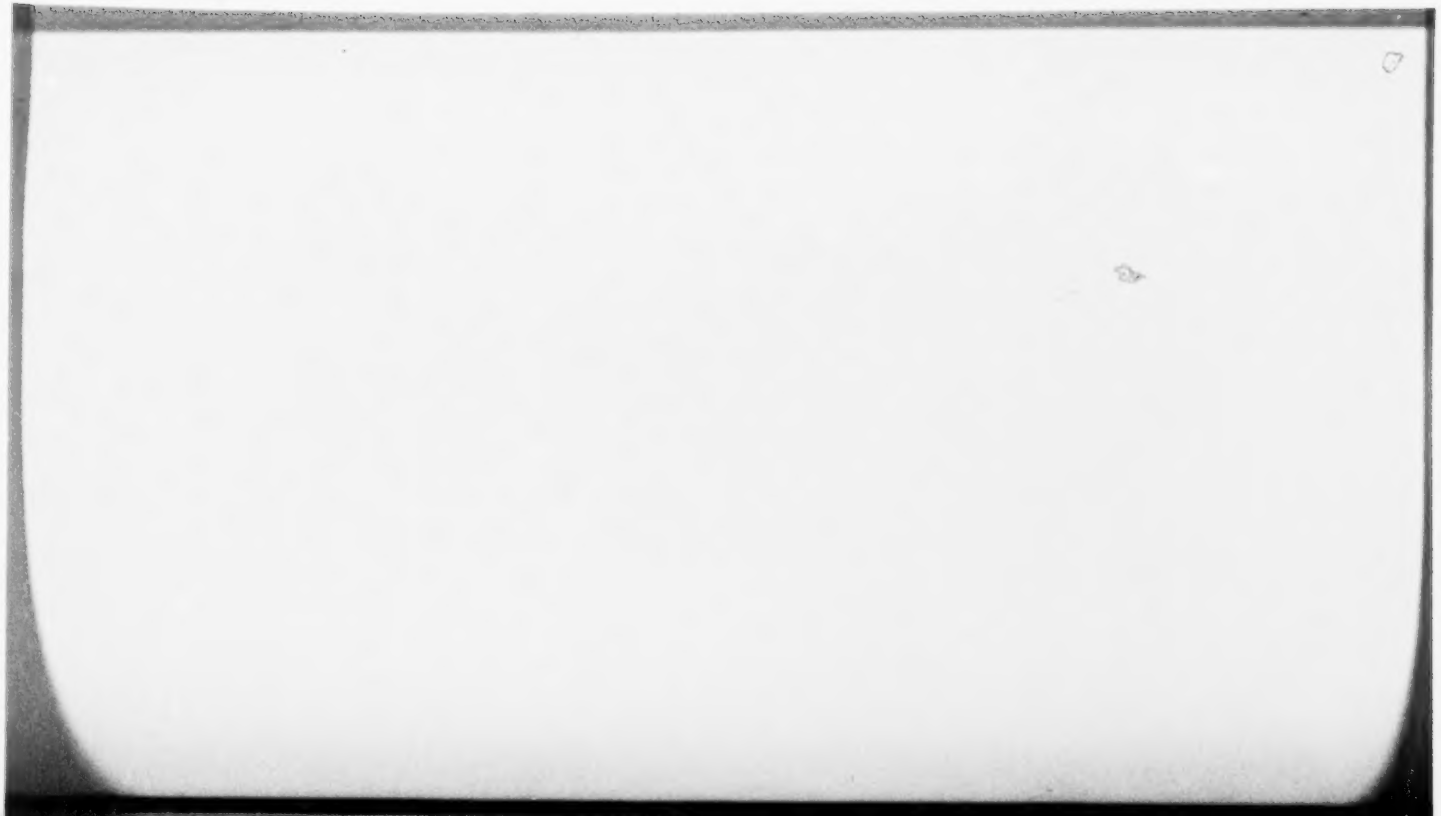
The defendant in error, West Chicago Park Commissioners, together with the members of the Board of Public Park Commissioners for the Town of West Chicago, having fully answered the rule heretofore entered in this court upon them to show cause why they should not be punished for contempt, should not be longer required to remain in doubt as to the force and effect of a supersedeas order, improvidently granted upon the issuing out of the writ of error in the above entitled cause.

It is therefore respectfully submitted that an order should be entered vacating such order of supersedeas.

FRANCIS A. RIDDLE,

Counsel for West Chicago Park Commissioners,

Defendant in Error.



22838

No. 201.

Answer of D. C. to Motion to Show Cause.

Office Supreme Court U.S.
FILED
OCT 8 1900
JAMES H. McKENNEY,
Clerk

Filed Oct. 8, 1900.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. ~~220~~ 201

THOMAS F. FARRELL ET ALS., *Plaintiffs in Error,*
vs.
WEST CHICAGO PARK COMMISSIONERS, *Defendants in Error.*

Error to the Supreme Court of Illinois.

The several and corporate answer of West Chicago Park Commissioners, as a quasi-municipal corporation, and the joint and several answers of Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, who are officers of and members of the Board of West Chicago Park Commissioners, to the rule heretofore entered in said Court upon the West Chicago Park Commissioners to show cause why said defendants should not be punished for contempt as prayed in the petition of plaintiffs in error filed in this Court on the 11th day of May, A. D. 1900.

F. A. RIDDLE,
COUNSEL FOR RESPONDENTS.

BARNARD & MILLER PRINT, CHICAGO.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 525.

THOMAS F. FARRELL et als.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendants in Error.

Error to the Supreme Court of Illinois.

The several and corporate answer of West Chicago Park Commissioners, as a quasi-municipal corporation, and the joint and several answers of Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, who are officers of and members of the Board of West Chicago Park Commissioners, to the rule heretofore entered in said Court upon the West Chicago Park Commissioners to show cause why said defendants should not be punished for contempt as prayed in the petition of plaintiffs in error filed in this Court on the 11th day of May, A. D. 1900.

This respondent, West Chicago Park Commissioners, says it is a quasi-municipal corporation, duly organized by an act of the General Assembly of the State of Illinois, entitled "An act to amend the charter of the City of Chicago, to create a Board of Park Commissioners, and to authorize a tax in the Town of West Chicago, and for other purposes," approved and in force February 27, 1869 (see Private Laws of Illinois, 1869, Vol. 1, p. 342); that its jurisdiction is exercised wholly within the Town of West Chicago, in the City of Chicago, County of Cook, and State of Illinois, and is by virtue of said act of the General As-

sembly of Illinois, known under the name of the "West Chicago Park Commissioners"; that it has power under said act and other acts of the said General Assembly to levy and collect special assessments for park and boulevard purposes, and to maintain, govern, regulate and control certain parks and boulevards within the said Town of West Chicago.

And this respondent, West Chicago Park Commissioners, further answering the said rule to show cause, says that by virtue of its power and authority it caused to be levied a special assessment upon the lots, lands, pieces and parcels of real estate benefited or to be benefited by the improvement of Douglas boulevard, from the south line of Colorado avenue to the west line of Douglas Park, in said City of Chicago; that the proceedings to levy and collect said special assessment were begun and carried on by the West Chicago Park Commissioners in accordance with the provisions of an act of the General Assembly of the State of Illinois, approved June 24, 1895; that said proceedings were begun in the County Court of Cook County, Illinois, in which court as a result of the prosecution of said proceedings an order of confirmation was finally entered on or about June 10, A. D. 1898; that from said order of confirmation so entered in said County Court the plaintiffs in error in the above entitled cause, with others, appealed to the Supreme Court of Illinois; that said appeal was heard in the said Supreme Court and determined therein on October 13, 1899, when a final judgment was entered in said Supreme Court of Illinois affirming the order of confirmation of said special assessment, which had heretofore been entered in said County Court. (See *Farrell* v. *West Chicago Park Commissioners*, 182 Ill., 250.)

This respondent, West Chicago Park Commissioners, further answering, says, that on or about the 2d day of February, A. D. 1900, a citation in the words and figures following, to wit:

"UNITED STATES OF AMERICA—ss.

To the West Chicago Park Commissioners, GREETING:

You are hereby *Cited* and *Admonished* to be and appear at a Supreme Court of the United States, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Illinois, wherein Thomas F. Farrell, John B. Scully, J. F. Reilly, M. H. Reilly, C. E. Greenfield, J. H. Brewster, John T. Milnamow, L. C. Stebbins, J. H. Londrigan, J. J. Carroll, James J. Casey, Thomas P. Casey, Mercy Hospital and Mercy Orphan Asylum, E. D. Raynor, David Henneberry, Elizabeth Twomey, Margaret McDonnell, Edward L. Casey, Margaret Casey, John Vaughn, J. McCalmont, E. J. McLaughlin, Sara E. Oberlander, A. C. Blettner, Edward J. McCarthy, Lottie Simon, Emily Stenberg, George H. Blettner, Lina D. Thompson, James L. Monaghan, Mary E. Bailey, James Connor, Ellis Roberts, Peter W. Reed, Sarah J. Lynch, A. R. Martin, Celia A. Neill, D. B. Waite, Thomas A. Davis, Mary La Lande, Frank I. Crane, Frank J. Novak, C. D. Gammon, Eliza Hennick, A. E. Gammon, Charles G. H. Meyer, John B. Kelter, M. Kelter, Rose Berwin, William L. Hoerber, John P. Coan, Henry Matthes, William Scott, John A. Mullen, F. W. E. Henkel, Carl Strueh, James C. Dooley, John G. Siessling, A. M. Maypole, Elizabeth B. Keller, Herman Paesler, G. A. Pudewa, Eugene O'Sullivan, F. W. Dorn, J. G. Sherman, W. A. Walter, Adelaide G. Walter, William Haase, Mina Slavik, Emma

A. Doyle, James Crighton, S. A. Scribner, Thomas D. Wayne, Mary O'Neill, Luke P. Colleran, C. S. Stover, William L. Brent, J. S. Lyons, John A. Wilson, D. M. Cunningham, J. W. Midgley, J. L. Hoerber, Jr., Charles J. Byrne, H. S. Josselyn, George W. Miles, M. A. Mahoney, Frank Zajicek, Edward J. Dryer, Joseph W. Bidwell and Michael Hannigan, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, Chief Justice of the Supreme Court of the State of Illinois, this 24th day of January, in the year of our Lord one thousand nine hundred.

JAMES H. CARTWRIGHT,
Chief Justice Supreme Court of Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Served this writ on the within named, The West Chicago Park Commissioners, by delivering a copy thereof to Ernest G. Schubert, secretary of said corporation, this 2d day of February, 1900; the president of said corporation not found in my county.

ERNEST J. MAGERSTADT, *Sheriff.*
By THOS J. MCNICHOLS, *Deputy.*"

was served upon this respondent, West Chicago Park Commissioners, in the manner shown by said citation hereinabove set forth.

This respondent, West Chicago Park Commissioners, further answering, says, that from and after the 2d day of February, A. D. 1900, and from and after the service of said citation, it has taken no action of any kind, name, nature or description respecting the writ of error sued out by the plaintiffs in error in the above entitled cause in this court, and has not at any time before or since the 2d day of February, 1900, made or caused to be made any return to the County Treasurer of Cook County, or to any other officer authorized to receive state and county taxes in Illinois on the lots and lands which had been assessed for benefits by reason of the improvement of said Douglas boulevard, and claimed to be owned by the plaintiffs in error whose names are mentioned in said citation.

This respondent, West Chicago Park Commissioners, further answering, said rule to show cause, says, that it is not true as stated in the petition filed by the plaintiffs in error herein for rule to show cause, etc., that this respondent returned or caused to be returned to the County Treasurer and ex-officio County Collector of Cook County, Illinois, the real estate belonging to plaintiffs in error as delinquent for the non-payment of said special assessment, and that the statement or averment in said petition of said plaintiffs in error that this respondent has ever at any time either before or since the date of the service of said citation made or caused to be made any return whatever to the County Treasurer and ex-officio County Collector of Cook County, Illinois, of the lots and lands, or any of them belonging to said plaintiffs in error, and which had been specially assessed by this respondent in the manner and for the purpose aforesaid, is wholly false and untrue.

This respondent, West Chicago Park Commissioners,

further answering said rule to show cause, says, that on the 2d day of February, A. D. 1900, when said citation was served upon this respondent as aforesaid, it had an officer known and recognized in the laws of the State of Illinois as a collector of special assessments; that said collector of special assessments had and now has authority, pursuant to the laws of Illinois, to do and perform all lawful duties and things necessary under and consistent with the laws of said state, to collect all special assessments lawfully levied by this respondent; that on the 2d day of February, A. D. 1900, and subsequently and until this time, the collector of special assessments was one John I. Straw, a citizen of lawful age, residing in the Town of West Chicago, and within the park district subject to the jurisdiction of this respondent; that said Straw had been collector of special assessments for this respondent for more than six months prior to the 2d day of February, A. D. 1900, and has since been and now is collector for all special assessments lawfully levied by this respondent.

And this respondent, further answering, says, that after the final judgment so entered in said Supreme Court of Illinois, on the 13th day of October, A. D. 1899, in the due course of practice, the usual order of affirmance reciting the decision and judgment of said Supreme Court of Illinois, in the case wherein the plaintiffs in error herein were therein appellants, and which cause in said Supreme Court of Illinois was entitled "*Farrell* v. *West Chicago Park Commissioners,*" was on the 13th day of November, 1899, filed in the said County Court of Cook County; and thereupon said John I. Straw, special collector as aforesaid, proceeded to collect said special assessment so levied by this respondent; that since the filing of said order of affirmance in the office of the clerk of said

County Court, this respondent, West Chicago Park Commissioners, has taken no action whatever of any kind, name, nature or description respecting the collection of said special assessment levied against any of the lots or lands of the plaintiffs in error, and has neither made or caused to be made any return of any of the lots which had been so specially assessed against the several lots and lands of the plaintiffs in error for the improvement of said Douglas boulevard, to the County Treasurer and ex-officio county collector upon the ground that such lots and lands were delinquent for the non-payment of the amounts so specially assessed against said lots, parcels and pieces of real estate.

And this respondent further answering said rule to show cause, says, that the subject-matter of a return of the lots and lands belonging to the plaintiffs in error which had been specially assessed as and for the purpose aforesaid by this respondent, to the County Treasurer and ex-officio County Collector of Cook County was never at any time or in any way before this respondent for action, and that this respondent never at any time took any action, or caused any action whatever to be taken respecting such returns.

And this respondent, further answering, says, that on or about the 12th day of April, A. D. 1900, it was served with the following demand and notice:

"In the Supreme Court of the United States.

Thomas F. Farrell *et al., Plaintiffs in Error,*
vs.
The West Chicago Park Commissioners, *Defendants in Error.*

Error to the Supreme Court of the State of Illinois.
To the West Chicago Park Commissioners:

You are hereby notified that unless you at once withdraw from collection a special assessment for the improvement of Douglas boulevard, from Garfield Park to Douglas Park, in the City of Chicago, in the County of Cook and State of Illinois, and cease all further efforts to collect the same, in so far as said special assessment relates to the property of the above named plaintiffs in error, proceedings will be commenced in said Supreme Court of the United States against you, and each of you, and a rule will be asked against each of you to show cause why each of you should not be punished for contempt in violating the writ in said cause, and the statute of the United States in such case made and provided.

Chicago, April 12, 1900.

Geo. W. Wilbur,
Attorney for Plaintiff in Error."

And this respondent, further answering, says, that the demand and notice above recited was the first information received or communicated to this defendant that the return of the lots and lands of the plaintiffs in error in this cause had been made to the County Treasurer and ex-officio Collector of Cook County as delinquent for the non-payment of said special assessment.

And this respondent further answering said rule to show cause, says, that it did not withdraw, and that it, at that time did not request the County Treasurer and ex-officio Collector of Cook County to withdraw from collection the special assessment for the improvement of Douglas boulevard as aforesaid, for the reason that this respondent was then advised by its counsel that the writ sued out by the plaintiffs in error in this court to the Supreme Court of the State of Illinois, did not operate as a supersedeas or suspend the right of the County Treasurer and ex-officio Collector of Cook County to proceed with the collection of said special assessment.

But this respondent, further answering said rule to show cause, says, that afterwards and after the rule to show cause had been entered in this court, it caused such steps to be taken as resulted in the withdrawal of all of the lots and lands of the plaintiffs in error which had been returned by said John I. Straw as such Collector of Special Assessments to said County Treasurer and ex-officio Collector as delinquent for the non-payment of said special assessment, from the application which had then been made for a judgment of sale of the lots of the plaintiffs in error. And this respondent joined with the said County Treasurer in withdrawing the lots and lands of plaintiffs in error from said application for judgment and sale, and joined with said County Treasurer in presenting to and having entered in said County Court of Cook County, on July 26, 1900, the following order:

"UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COUNTY OF COOK, } ss.

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County, begun and holden at the court house in the City of Chicago, in said county and state, on the second Monday, being the 9th day of July, in the year of our Lord one thousand nine hundred, and of the independence of the United States of America the one hundred and twenty-fifth.

Present—The Honorable Orrin N. Carter, Judge of the County Court of Cook County.

ERNEST G. MAGERSTADT,
Sheriff of Cook County.

Attest:
PHILIP KNOPF, *Clerk.*

Be it remembered that, heretofore, to wit: on the 26th day of July, in the year of our Lord one thousand nine hundred, the same being one of the days of the July term of the County Court of Cook County, the following, among other proceedings, were had and entered of record in said court, to wit:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE COUNTY COURT OF COOK COUNTY.

In the matter of the application of S. B. Raymond, County Treasurer and ex-officio Collector of Cook County, Illinois, for judgment against certain delinquent lands, town lots and real property for the amount due and unpaid upon the same for a certain special assessment levied by the West Chicago Park Commissioners to pay the cost of improving Douglas boulevard from the southeasterly line of Garfield Park to the west line of Douglas Park, in the City of Chicago, County of Cook, and State of Illinois, said application for judgment being made by said County Treasurer at the July term, A. D. 1900, of said County Court.

And now comes the West Chicago Park Commissioners by Francis A. Riddle, its attorney, and Samuel B. Raymond, County Treasurer and ex-officio County Collector of Cook County, by Julius A. Johnson, his attorney, and show to the court that after the order was entered by the Supreme Court of Illinois on October 13, A. D. 1899, affirming the order heretofore entered in this court confirming said special assessment so levied by West Chicago Park Commissioners for the improvement of said Douglas boulevard from the southeasterly line of Garfield Park to the west line of Douglass Park as aforesaid, the several persons owning or interested in the following described lots, parcels and pieces of real estate specially assessed by said West Chicago Park Commissioners for benefits re-

sulting to each of such lots, parcels and pieces of real estate from said improvement of said Douglas boulevard as aforesaid, namely:

Lots 14, 15, 16, 17, 18, 20 and 21, in block 3, of Vance's subdivision of the east ½ of the north-west ¼, south of Colorado avenue (except the west 250 feet thereof), in section 14, township 39, range 13.

Lots 1, 2, 5, 6, 11 and 22, in the subdivision of the west ½ of the north ½ of the west ½ of the east ½ of the south-west ¼ section 14, township 39, range 13.

The north ½ of the north 6½ acres (except R. R. and except boulevard) of the south-west ¼ of the east ½ of the south-west ¼ of Sec. 14-39-13.

The South ½ of the north 6½ acres (ex. boulevard) of the south-west ¼ of the east ½ of the south-west ¼ of Sec. 14-39-13.

Lots 9, 10, 11, 12, 13, 14, 15, 17, 18, 37, 38, 39, 40, 41, 42, 43 and 44 of Edward Casey's Addition to Chicago, being a subdivision of the south 6 acres (ex. boulevard) of the south-west ¼ of the east ½ of the south-west ¼ Sec. 14-39-13.

Lots 5, 8, 9, 20, 21, 22, 23 and 24, in block 1, and lots 8, 12, 15, 16, 17, 18, 19 and 22, in block 2, and lot 22, in block 3, lots 18, 19, 20, 21, 22 and 23, in block 4 of Vance's and Philip's Boulevard Addition to Chicago, being a subdivision of the north-east ¼ of the north-west ¼ (except the north-east ¼ thereof) Sec. 23-39-13.

Sub-lots 19, 20, 21 and 27 of lot A in block 2 of Vance's Garfield Boulevard Addition, being a subdivision of parts of blocks 1 and 2, in Circuit Court partition of the west ½ of the south-west ¼ Sec. 14-39-13.

Sub-lots 44, 45, 46, 48, 49, 50 and 51, of lot 1, in block 3, of Garfield Boulevard Addition, in the west ½ of the south-west ¼, Sec. 14-39-14.

Sub-lots 42, 43 and 51, of lot 2, in block 3, of Cummings' Garfield Boulevard Addition, being a subdivision of lot 2, block 3, and lot 2 of block 4, in the Circuit Court partition of the west ½ of the south-west ¼, Sec. 14-39-13.

Lots 44, 45, 46, 47 and 48 in block 6 of L. E. Ingall's subdivision of that part south of W. C. R. R., and of blocks 5 and 6 of Circuit Court partition of west ½ of south-west ¼, Sec. 14-39-13.

Sub-lots 1 and 6, of lot 1, in block 7, of Garfield Boulevard Syndicate Addition to Chicago, being a subdivision of lot 1, block 7, of Circuit Court partition of west ½ of south-west ¼, Sec. 14-39-13.

Lots 25, 26, 27, 28, 29 and 30, in Block 5, lots 36, 39, 41, 42, 43 and 44 in block 6, of D. S. Goodwin's subdivision, in the north-west ¼ of the north-east ¼ of Sec. 23-39-13.

Lots 14, 15, 16, 17, 20, 22, 23 and 24, in block 3, and lots 14 and 15, the east ½ of 16, the west ½ of 16, 17, 18, 20, 21, 22, 23 and 24, in block 4, of Downing, Corning & Prentice's Douglas Park Addition, in the east ½ of the north-west ¼, Sec. 23-39-13.

Lot 4 of L. B. Dowd's subdivision of the west ½ of the south-east ¼ of the north-west ¼ (ex. N. 125 feet), Sec. 23-39-13.

Sub-lots 5 and 24 (ex. west 16 feet thereof), in the re-subdivision of lots 3, 4, 5, 20, 21 and 22 of block 1, in Grant's Addition to Chicago, in the south-west ¼ of the north-west ¼, Sec. 23-39-13.

Sub-lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, in block 3 of Keeler's subdivision of lots 3 to 22 and 152 feet of vacated alley south of Douglas boulevard, and part of lots 2 and 23, block 3, in Sec. 23-39-13.

Sub-lots 6, 7, 8, 9 and 10, in block 4, of Herman Paesler's re-subdivision of lots 3, 4, 5, 20, 21 and 22, and part of lots 2 and 23, in block 4, Sec. 23-39-13.

Lots 3, 4, 5, 6, 7, 10 and 11, in block 6, of Shaw, Karrigan and Solomon's subdivision of block 6, of the Circuit Court partition of the east $\frac{1}{2}$ of the north-east $\frac{1}{4}$, Sec. 23-39-13.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, in block 7, in Sherman & Walter's subdivision of block 7, Sec. 23-39-13.

The east 150 feet (ex. street) of block 1, Douglass Park Addition to Chicago, in the west $\frac{1}{2}$ of the north-west $\frac{1}{4}$ of Sec. 24-39-13.

Also the west 150 feet of the east 350 feet (ex. street) of block 1, Douglas Park Addition to Chicago, in west $\frac{1}{2}$ north-west $\frac{1}{4}$, Sec. 24-39-13.

Lots 42 and 43, in block 2, of Douglas Park Addition to Chicago, in west $\frac{1}{2}$ north-west $\frac{1}{4}$, Sec. 24-39-13.

Lots 18 and 19, in the subdivision of the west $\frac{1}{2}$ of the north $\frac{1}{2}$ of the west $\frac{1}{2}$ of the east $\frac{1}{2}$ of the south-west $\frac{1}{4}$, Sec. 14-39-13.

Lots 4, 5, 6, 7, 10, 11 and 20, in block 2, and lots 24 and 25, in block 4, of Vance & Philip's Boulevard Addition to Chicago, being a subdivision of the north-east $\frac{1}{4}$ of the north-west $\frac{1}{4}$ (ex. the north-east $\frac{1}{4}$ thereof) Sec. 23-39-13.

Sub-lot 4 of lot 2, in block 2, of Harshaw and Price's subdivision of lot 2, in block 2, in Circuit Court partition of the west $\frac{1}{2}$ of the south-west $\frac{1}{4}$, Sec. 14-39-13.

Sub-lots 1, 2, 3 and 4 of lot 1, in block 6, of W. J. and D. F. Anderson's subdivision of part of sub-block 1, of block 6, in the Circuit Court partition of the west ½ of the south-west ¼, Sec. 14-39-13.

Sub-lot 7 of lot 1, in block 7, of Garfield Boulevard Syndicate Addition to Chicago, being a subdivision of lot 1, block 7, of Circuit Court partition of west ½ of south-west ¼, Sec. 14-39-13.

Sub-lots 4 and 5, of lot 2, of block 7, of Feinberg & Loeffler's Douglas Boulevard Addition in the south-west ¼ of Sec. 14-39-13.

Sub-lots 21 and 22 of lot 2, in block 1, of Prescott's Douglas Boulevard Addition to Chicago, in Sec. 23-39-13.

Lot 2, in block 2, of the re-submission of lots 3, 4, 5, 20, 21 and 22, in Grant's Addition to Chicago, in the south-west ¼ of the north-east ¼, Sec. 23-39-13.

Sub-lots 1, 2, 3, 4 and 5, in block 4, in Herman Paesler's re-subdivision of lots 3, 4, 5, 20, 21 and 22, and part of 2 and 23, block 4, in Grant's Addition to Chicago, of the south-west ¼ of the north-east ¼ of Sec. 23-39-13.

Sub-lots 8 and 9 of Shaw, Karrigan & Solomon's subdivision of block 6, of the Circuit Court partition of the east ½ of the north-east ¼ of Sec. 23-39-13.

Also the west ½ of the north 2 acres of the north-east ¼ of the east ½ of the south-west ¼ of the north-west ¼, Sec. 23-39-13.

Sub-lots 5 and 6 of lot 1, block 6, in W. J. and D. F. Anderson's subdivision of a part of sub-block 1 of block 6, in Circuit Court partition of west ½ south-west ¼, Sec. 14-39-13.

Sub-lot 8 of lot 1, in block 7, in Garfield Boulevard

Syndicate Addition to Chicago, being a subdivision of lot 1, block 7, of Circuit Court Partition of west ½ of south-west ¼, Sec. 14-39-13.

Sub-lots 15, 16, 17 and 18, of lot 2, block 2, in Prescott's Douglas Park Addition to Chicago, in Sec. 23-39-13.

Lots 7, 8, 9 and 10 of L. B. Dowd's subdivision of the west ½ of the east ½ of the south-east ¼ of the north-west ¼ (ex. N. 125 feet), Sec. 23-39-13.

Lots 1 and 2, in block 6, in Shaw, Karrigan & Solomon's subdivision, in the Circuit Court partition of the east ½ of the north-east ¼ of Sec. 23-39-13.

Sub-lot 7 of lot 2, in block 5, of Prescott's Douglas Park Addition to Chicago, being a subdivision of blocks 1, 2, 5 and 10, in Circuit Court partition of the east ½ of the north-east ¼ and east ½ of the south-east ¼, Sec. 23-39-13, sued out a writ of error in the Supreme Court of the United States, and which writ of error now operates as a supersedeas against further proceedings to enforce the collection of said special assessment against said several lots, parcels and pieces of real estate, respectively.

Now, therefore, on motion of Francis A. Riddle, attorney for said West Chicago Park Commissioners, and Julius A. Johnson, attorney for said County Treasurer, it is therefore ordered that the said application for judgment against each and every of the lots, parcels and pieces of real estate hereinabove described, be withdrawn, and that the judgment sale and redemption record be kept in the office of said County Treasurer for that purpose for the year 1900, in which said several lots, parcels and pieces of real estate were listed and entered, be marked on the margin thereof, opposite the entry of the respective de-

scriptions of said lots, parcels and pieces of real estate, as follows:

"Withdrawn from application for judgment, but without prejudice to the right of the said County Treasurer to again apply for judgment, and without prejudice also to the right of West Chicago Park Commissioners to return said several lots, parcels and pieces of real estate delinquent for the non-payment of said special assessment, and without prejudice to the right of said Park Commissioners to direct said County Treasurer to apply for judgment against said several lots, parcels and pieces of real estate at any time after the writ of error so sued out and now pending in the Supreme Court of the United States shall have been finally determined by said Supreme Court."

"STATE OF ILLINOIS, } ss.
COOK COUNTY. }

I, Philip Knopf, Clerk of the County Court of Cook County, and the keeper of the records and files thereof, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order entered of record July 26, A. D. 1900, in a certain cause in said court, in the matter of the application of Samuel B. Raymond, County Treasurer, and ex-officio County Collector for judgment on delinquent special assessment levied by West Chicago Park Commissioners for improvement of Douglas boulevard, etc., etc., etc.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 14th day of September, 1900.

[SEAL.] PHILIP KNOPF, *Clerk*."

And this respondent further answering said rule to show cause, says, that after the entry of the order above set forth, and after the 26th day of July, A. D. 1900, neither the County Treasurer of Cook County nor this respondent has taken any steps, either directly or indirectly, to enforce the payment of said special assessment so levied as aforesaid, against any of the lots and lands of the plaintiffs in error herein, and that no application for a judgment for a sale of any of the lots or lands of the plaintiffs in error is now pending in said County Court of Cook County, or elsewhere, and that this respondent has no purpose or intention of taking any steps of any kind or character to collect said special assessment so levied against the lots and lands of the plaintiffs in error until its right to do so shall have been determined by the order and judgment of this court.

And this respondent, West Chicago Park Commissioners, a quasi-municipal corporation duly organized and existing under and pursuant to the laws of the State of Illinois, having fully answered all of the matters and things required by it to be answered and shown, in obedience to said rule to show cause, prays to have said rule as to it discharged.

WEST CHICAGO PARK COMMISSIONERS.
By JOSEPH W. SUDDARD, *President.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Ernest G. Schubert, being first duly sworn, on oath says that he is and for three years last past has been the secretary of West Chicago Park Commissioners, a quasi-municipal corporation existing under the laws of the State of Illinois; that he is the keeper of the records and seal of said Park Commissioners; that he has read over the foregoing answer of West Chicago Park Commissioners and knows the contents thereof to be true in substance and in fact.

This affiant further says that he has carefully examined the records of the proceedings in respect to all of the matters and things done by said West Chicago Park Commissioners between the 13th day of October, A. D. 1899, and the 25th day of September, A. D. 1900, and from such examination, and from his personal knowledge swears that the subject-matter of making a return of the lots and lands of the plaintiffs in error in the above entitled cause to the County Treasurer and ex-officio Collector of Cook County, as delinquent for the non-payment of the several amounts assessed by said West Chicago Park Commissioners against the several lots and lands of the plaintiffs in error for paying the cost of the improvement of Douglas boulevard from the south line of Colorado avenue to the west line of Douglas Park was never before the Board of West Chicago Park Commissioners at any meeting thereof at any time heretofore, and was never presented to or discussed by the members of said board at any meeting thereof.

And affiant further swears that he knows that the statement in the petition filed in this court by the plaintiffs in

error to the effect that the West Chicago Park Commissioners as a municipal corporation had returned the real estate of Thomas F. Farrell and his co-plaintiffs in error as delinquent to the County Treasurer and ex-officio County Collector of Cook County, Illinois, for the non-payment of special assessment, is wholly false and untrue.

Affiant further says that as the secretary of said West Chicago Park Commissioners he never at any time gave any instruction to any officer or employe of the board of West Chicago Park Commissioners to make any such return, and that no member of the Board of West Chicago Park Commissioners, or any officer thereof, either directed, advised or requested this affiant as such secretary or otherwise, to make or cause to be made any return of the lots and lands of the plaintiffs in error herein to the County Treasurer of Cook County as being delinquent for the non-payment of the special assessment particularly described in the foregoing answer.

ERNEST G. SCHUBERT.

Subscribed and sworn to before me this 26th day of September, 1900.

PHILIP KNOPF,
County Clerk.

And now come also Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, and in answer to the rule heretofore entered in this honorable court in the above entitled cause, ordering the defendants in error therein to show cause

why the defendants in error should not be punished for contempt as prayed in said petition, say,

That on the first day of March, A. D. 1900, they were, respectively, members of the board of "Public Park Commissioners," a quasi-municipal corporation existing under the laws of the State of Illinois, and known under the name and description of "West Chicago Park Commissioners"; that they are officers of the State of Illinois, appointed by the governor of said state to act and serve as members of said Board of Park Commissioners, and to perform all of the duties connected with the business and affairs of said West Chicago Park Commissioners required of them under the laws of said state, and that the said Board of Public Park Commissioners consists of seven members, who are resident freeholders and qualified voters of the Town of West Chicago. (See Private Laws of 1869, Vol. 1, p. 342, Sec. 2.)

And these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf further answering said rule for themselves, say that they are still members of said board of West Chicago Park Commissioners and are in the discharge of the official duties imposed upon them by law as said park commissioners, but that some time subsequent to April 25, 1900, Anton Peterson and Frank T. Fowler, who had theretofore been members of said board of park commissioners, ceased to be both legally and in fact officers and members of said park commissioners, and are not now either of them members of said board.

And these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, further answering said rule to show cause say, each for himself, that they did not know that

any return had been made to the county treasurer and ex-officio collector of Cook County of the lots and lands of the plaintiffs in error in this cause, on the ground that such lots and lands of the plaintiffs in error were delinquent for the non-payment of the special assessment heretofore levied by West Chicago Park Commissioners as such municipal corporation, as set forth in the foregoing corporate answer of said park commissioners, until on or about the 12th day of April, A. D. 1900, when the notice and demand hereinabove set forth in the corporate answer of said West Chicago Park Commissioners, the defendant in error herein, signed by "George W. Wilbur, attorney for said plaintiffs in error," was served upon said West Chicago Park Commissioners as a quasi-municipal corporation, and upon each of these respondents, respectively; that at no time prior to April 12, A. D. 1900, had these respondents or any of them, acting in his official capacity as a member of said board of West Chicago Park Commissioners, or as an individual, either by his vote or otherwise, instructed or caused to be instructed any officer, employe or attorney of said West Chicago Park Commissioners to make any return to the county treasurer and ex-officio collector of Cook County of any of the lots and lands owned or claimed to be owned by the plaintiffs in error in this cause, upon the ground that the same were delinquent for the non-payment of the special assessment hereinbefore and in the corporate answer of said West Chicago Park Commissioners set forth.

But these respondents further answering, say, that they were soon after April 12, 1900, informed and on information state that John I. Straw, who was then and now is collector of all special assessments levied by said park commissioners, had made, on the first day of March, A. D.

1900, but without the knowledge, acquiescence or consent of these respondents a formal return of the lots and lands of the plaintiffs in error to the said county treasurer, upon the ground that such lots and lands were delinquent for the non-payment of said special assessment.

And these respondents further answering said rule to show cause say, that after the notice signed by George W. Wilbur, attorney for plaintiffs in error, was served upon them they were advised by counsel that under the law they were not required to take any action whatever, respecting the demand so made by the plaintiffs in error, as to the withdrawal of the application of the county treasurer and ex-officio collector of Cook County made to the County Court of Cook County for a judgment ordering the sale of the lots and lands of plaintiffs in error, because of the non-payment of the special assessment heretofore referred to, for the reason, as these respondents were advised by counsel, that the supersedeas order in the writ of error issued in the above entitled cause did not affect the power and authority of said county treasurer to take such steps as under the law were necessary to collect said assessment against the lots and lands of the plaintiffs in error, nor the power and authority of the collector of special assessments of the West Chicago Park Commissioners to make the return which, as such collector of special assessments he had made, although without the direction or knowledge of these respondents, of the lots and lands of the plaintiffs in error to said county treasurer.

These respondents further answering said rule to show cause say, that John I. Straw is an officer of said West Chicago Park Commissioners, authorized by law, and whose duty it is to collect all special assessments lawfully levied by said park commissioners, but that in making the

return of the lots and lands of the plaintiffs in error returned by him as such officer as delinquent for the non-payment of said special assessment to the county treasurer and ex-officio collector of Cook County, he acted without the advice, authority, direction, knowledge or concurrence of these respondents, or any or either of them, whether acting officially or as individuals.

And these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, further answering, say, that subsequent to the service of the rule upon them, respectively, to show cause, etc., an order was entered in the County Court of Cook County on July 26, A. D. 1900, in and by which said order the application of the said county treasurer for a judgment for a sale of the lots and lands of the plaintiffs in error in this cause was withdrawn; that the order so entered in said County Court of Cook County is hereinabove set out in the corporate answer of the West Chicago Park Commissioners, and was so entered by the authority and direction of these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, and that Samuel B. Raymond, county treasurer and ex-officio collector of Cook County, joined with these respondents, who are a majority of said West Chicago Park Commissioners, in the withdrawal of the application of a judgment of sale against each and every of the lots and lands of the plaintiffs in error, and in the entry of said order in said County Court of Cook County.

And these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf further answering said rule to show cause, say, that there is not now pending any application,

either in the County Court of Cook County or elsewhere for a judgment directing the sale of all or any of the lots of the plaintiffs in error on account of the non-payment of said special assessment, and that these respondents have never at any time, either by any act or thing said or done by them or either of them, acting officially as a member of said board of park commissioners or individually, violated or failed to respect the supersedeas order contained in the writ of error sued out in the above entitled cause, and that each of them omitted to take all such steps as members of said board of public park commissioners, and to do all things within their power as such officers to withdraw the application for a judgment of sale against the lots and lands of the plaintiff in error from the said County Court of Cook County after the fact came to their knowledge that a return of such lots and lands had been made to the county treasurer of Cook County, because they were advised by counsel that neither the return of said lots and lands so made by the said John I. Straw as such collector of special assessments nor the application of the said Samuel B. Raymond as county treasurer and ex-officio collector of Cook County to the County Court of Cook County for a judgment of sale of such lots and lands, was under the law a violation of any duty imposed upon them by the supersedeas order contained in the writ of error issued in this cause.

And these respondents, Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf further answering said rule to show cause say, that neither or any of them are in law defendants in error in the above entitled cause, but that the "West Chicago Park Commissioners" as such municipal corporation, is the only defendant in error therein: that

the only relation of these respondents to the above entitled cause is that of members of said board of public park commissioners, appointed by the governor of Illinois as aforesaid, and make this answer to the said rule to show cause, for the reason that as such officers and members of said board they were on March 1, A. D. 1900, when said return was made, and have since been responsible for the proceedings, actions and business affairs of said West Chicago Park Commissioners.

And having fully answered all of the matters and things required of them and each of them, and having done or caused to be done all things necessary to place said West Chicago Park Commissioners in the proper relation of obedience to the supersedeas order of said writ of error, respectfully ask to be discharged from further or other duty in the premises, and that said rule both as to said West Chicago Park Commissioners and these respondents be also discharged.

JOSEPH W. SUDDARD,
FREDERICK M. BLOUNT,
ANDREW J. GRAHAM,
CHARLES B. PAVLICEK,
CHARLES W. KOPF.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, A. D. 1900.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,

No. 525. *vs.*

West Chicago Park Commissioners,
Defendants in Error.

ERROR TO THE SUPREME COURT OF ILLINOIS.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, being first duly sworn on their respective oaths say: that they are residents of the town of West Chicago, in the city of Chicago and State of Illinois, and that since a date prior to October 13, 1899, they and each of them have been and now are, this 25th day of September, A. D. 1900, duly qualified officers of the State of Illinois and members of the board of public park commissioners, a *quasi*-municipal corporation known and designated in the laws of Illinois under the name and style of West Chicago Park Commissioners.

These affiants, each for himself, further swears, that he has read over the foregoing answer to the rule heretofore issued in the above entitled cause, requiring the defendants in error to show cause why they should not be punished for contempt, signed by these affiants, respectively, and each for himself says, that he knows the contents thereof, and that the same is true in substance and in fact.

And these affiants further swear, each for himself, that he has not done or knowingly suffered to be done, either while acting officially as a member of said board of public park commissioners, or as an individual, any act or thing which in any way or manner was a violation of any order or mandate to this court in respect to anything done by them or either of them, in making a return to the county treasurer and ex-officio collector of Cook County, Illinois, of the lots and lands or any of them, of the plaintiffs in error, on the ground that such lots and lands were delinquent for the non-payment of the special assessment levied by said park commissioners to pay the cost of improving Douglas boulevard from the south-easterly line of Garfield Park to the west line of Douglas Park, in the city of Chicago, County of Cook and State of Illinois.

JOSEPH W. SUDDARD,
FREDERICK M. BLOUNT,
ANDREW J. GRAHAM,
CHARLES B. PAVLICEK,
CHARLES W. KOPF.

Subscribed and sworn to before me by the said Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, this 26th day of September, A. D. 1900.

PHILIP KNOPF,
County Clerk and Clerk of the County Court of Cook County, Illinois.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1900.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,

No. 525. *vs.*

West Chicago Park Commissioners,
Defendants in Error.

ERROR TO THE SUPREME COURT OF ILLINOIS.

The joint and several answers of Anton Petersen and Frank T. Fowler, to the rule heretofore entered in said cause, to show cause why West Chicago Park Commissioners should not be punished as for contempt.

These respondents, Anton Petersen and Frank T. Fowler, answering for themselves, and each for himself, say: that they have knowledge of the existence of a *quasi*-municipal corporation known under the laws of the State of Illinois as West Chicago Park Commissioners; that said West Chicago Park Commissioners is governed and its affairs are managed by a board of public park commissioners appointed by the governor of Illinois; that on the first day of March, 1900, these respondents were both members of such board of park commissioners, and were in the discharge of their duties as such park commissioners; but that afterwards, and on the————day of ————————, they ceased to be members of such board of park commissioners, and since the day last mentioned have had no connection with, authority or control of the business and affairs of said West Chicago Park Commissioners.

And these respondents further answering each for himself says; that neither of them ever knew that a return

had been made of the property of the plaintiffs in error in this cause to Samuel B. Raymond, county treasurer and ex-officio collector of Cook Conuty, on the ground that such lots and lands were delinquent for the non-payment of a special assessment which had theretofore been levied by said West Chicago Park Commissioners to pay the cost of improving Douglas boulevard from the south-easterly line of Garfield Park to the west line of Douglass Park, in the city of Chicago, Illinois; that the first knowledge these respondents, or either of them had, that such return had been made, was on or about the 12th day of April, A. D. 1900, when service of a notice and demand was made upon these respondents as individuals to withdraw the application of said Samuel B. Raymond as such collector, made to the County Court of Cook County, Illinois, for a judgment for a sale of the lots and lands of the plaintiffs in error, upon the ground that such lots and lands were delinquent for non-payment of said special assessment.

These respondents, further answering said rule to show cause, say that neither they nor either of them ever advised John I. Straw, who was on March 1, 1900, collector of special assessments for the West Chicago Park Commissioners, to make any return of the lots and lands of the plaintiffs in error to the county treasurer of Cook county for any purpose whatever, and had no knowledge that such return had been made until on or about April 12, 1900.

And these respondents, further answering, say that they never have disregarded or disobeyed the supersedeas order granted at the time of the issuing of the writ of error in the above entitled cause, and that neither they or either of them know what steps have been taken by said West Chicago Park Commissioners, since the date when they

ceased to be members of said board; and these respondents are informed and believe and on such information state, that the application of said county treasurer made to the County Court of Cook County, for a judgment of sale against the lots and lands of the plaintiffs in error has been withdrawn.

And these respondents having fully answered all of the matters and things which they are advised, it is necessary for them to answer respecting said rule to show cause, pray to be discharged from further duty or obligation in the premises.

ANTON PETERSEN,
FRANK T. FOWLER.

Subscribed and sworn to by the said Anton Peterson and Frank T. Fowler this 28th day of September, 1900.

E. G. SCHUBERT,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1900.

Thomas F. Farrell *et al.*,
Plaintiffs in Error,

No. 525. *vs.*

West Chicago Park Commissioners,
Defendant in Error.

ERROR TO THE SUPREME COURT OF ILLINOIS.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Francis A. Riddle, being duly sworn on his oath says; that he is a citizen of the State of Illinois, of lawful age, and a resident of the city of Chicago, Cook County, Illinois; that he is by profession a lawyer, admitted to practice law at the bar of the Supreme Court of Illinois and at the bar of this court; that for more than three years last past he has been the attorney of the defendant in error, West Chicago Park Commissioners, and authorized to represent said park commissioners in all legal actions and proceedings; that he is familiar with and knows the contents of the corporate answer filed by said West Chicago Park Commissioners as a municipal corporation, in this cause to be true in substance and in fact, and he is also familiar with the facts set forth in the joint and several answers filed herein of Joseph W. Suddard, Frederick M. Blount, Andrew J. Graham, Charles B. Pavlicek and Charles W. Kopf, all of whom for more than one year last past have been to the knowledge of this affiant duly qualified members of the Board of Public Park Commissioners, lawfully known and designated as "West Chicago Park Commissioners," in the Statutes of Illinois.

Affiant further says that during the latter part of the month of February, A. D. 1900, John I. Straw, who was then and is now the collector of special assessments for said West Chicago Park Commissioners, an officer authorized to be appointed by the said West Chicago Park Commissioners under the laws of Illinois, and whose duty it is to collect all special assessments lawfully levied by said West Chicago Park Commissioners, and to make a return to the county treasurer and ex-officio collector of Cook County from time to time of all lots and lands against which any special assessment had been levied by said West Chicago Park Commissioners, pursuant to law, applied to this affiant for advice as to his duty respecting the return of the lots and lands of the plaintiffs in error in the above entitled cause, for the reason that the owners of such lots and lands had not paid the amount of the special assessment which had theretofore been levied by said park commissioners against such lots and lands to pay the cost of improving Douglas boulevard from the south-easterly line of Garfield Park to the west line of Douglas Park, in said city of Chicago and in the town of West Chicago.

This affiant further says that he made due investigation of the right of said straw to make such return, and upon what then seemed to this affiant to be unquestioned authority as to the law in such case, advised said Straw as such collector, to make and return to the said county treasurer on the first of March, 1900, all of the lots and lands, including those of the plaintiffs in error, which had not paid the amount of the special assessment levied against such lots and lands respectively as aforesaid.

And this affiant further says that before advising said Straw as such collector, he ascertained from a careful

examination of the records of the Supreme Court of Illinois, that a copy of the writ of error sued out in this cause had not been lodged for the adverse party in the clerk's office of said Supreme Court of Illinois, until on or about January 24, 1900; said clerk's office of the Supreme Court of Illinois being the office where the record of the judgment remains, and to review which judgment the writ of error in this cause was sued out upon the petition of the plaintiffs in error.

This affiant further says that he ascertained also by examination of the files and records of the Supreme Court of Illinois relating to the cause and judgment from which said writ of error was sued out by the plaintiffs in error in this cause, that the bond required to be given had not been filed with the clerk of said Supreme Court until on or about January 24, 1900, and that after said bond had been filed and approved, and on or about January 29, 1900, it had been altered and amended by the insertion in the body of said bond of the name of one Micheal Hannigan, without the consent of the surety on said bond; and this affiant was then and is now of the opinion that said act of altering said bond rendered the same nugatory.

Affiant further says that he ascertained that the judgment of the Supreme Court of Illinois, to review which the writ of error in this cause was sued out, was entered in said Supreme Court of Illinois on October 13, 1899, and that the judgment so entered in said Supreme Court of Illinois, had not been either set aside or modified, but the same stood and now stands in said Supreme Court as a final judgment entered in the cause now reported as "*Farrell* v. *West Chicago Park Commissioners*, 182 Ills., 250."

And this affiant further says that in view of the facts and the record in the Supreme Court of Illinois, he was conscientiously and firmly of the opinion that the failure of the plaintiffs in error to sue out their writ in this court, within sixty days, Sundays exclusive, from the date of the rendition of the judgment in said *Farrell* v. *West Chicago Park Commissioners*, and to lodge a copy thereof in the office of the clerk of the Supreme Court of Illinois, within sixty days, Sundays exclusive, from and after the 13th day of October, 1899, and to file a proper and sufficient bond, did not entitle the plaintiffs in error in this cause to a supersedeas, and that the supersedeas order contained in said writ of error was not such a mandate of this court as required said West Chicago Park Commissioners, or any of its officers, to respect or obey it.

And this affiant further says; that in so advising said Straw as such collector, he relied upon the authority found in *Kitchen* v. *Edmund Randolph*, 93 U. S., 86, and upon the adjudicated case of *Russell Sage, et al.* v. *The Central Railroad Co. of Iowa, et al.*, 93 U. S., 412, as expressive of the law governing the rights of the West Chicago Park Commissioners, the defendant in error herein.

Affiant further says that as to the question of the date of the finality of the judgment in the Supreme Court of Illinois, to correct which the writ of error in this cause is sued out, he relied upon the adjudicated cases of *Sholty* v. *McIntyre, Armr.*, reported in 136 Ill., 133; the adjudicated case of *Lester* v. *People of the State of Illinois*, reported in 150 Ill., 150, and in the adjudicated case of *Klien* v. *Charles L. Boyd, Receiver*, reported in 169 Ill., 325, as fully expressing the law upon the question of what is a final judgment and the effect thereof.

Affiant further says that he did not know until about April 12, 1900, that the plaintiffs in error or their counsel claimed that the supersedeas order upon the suing out of said writ of error was an order or command of this tribunal, prohibiting the West Chicago Park Commissioners, defendant in error, or its proper officer in that behalf, from making a return of the lots and lands of plaintiffs in error upon the ground that they were delinquent for the non-payment of said special assessment.

This affiant further says that he did not until on or about April 12, 1900, advise said West Chicago Park Commissioners, or any of the members of the Public Board of Park Commissioners, known in the laws of Illinois as West Chicago Park Commissioners, that any return had been made, or that he had advised said John I. Straw as such collector of special assessments, to make a return to said county treasurer of the lots and lands of the plaintiffs in error herein, as delinquent for the non-payment of said special assessment. But this affiant in respect to so advising said Straw as such collector acted upon the general authority given to him by said West Chicago Park Commissioners to represent it in all legal proceedings, and to do and perform such professional acts and to give such advice as might be necessary in respect to the affairs of said park commissioners relating to all special assessments which had been lawfully levied by said park commissioners, including the special assessment for paying the cost of the improvement of said Douglas boulevard.

Affiant further says that, after the service of the rule issued by this court requiring the defendants in error to show cause, he advised said West Chicago Park Commissioners and the members of said Board of Public Park

Commissioners to withdraw or to join with the county treasurer of Cook county in withdrawing the application which had been made and was then pending in the County Court of Cook County for judgment against the several lots and lands of the plaintiffs in error, for sale, because such lots and lands were delinquent for the non-payment of said special assessment; and, accordingly, on July 26, A. D. 1900, a formal order was presented to and entered of record by said County Court, upon the joint motion of said county treasurer and said West Chicago Park Commissioners, in and by which said order all of the lots and lands of the plaintiffs in error herein were withdrawn from said application for judgment; that no application is now pending for a judgment against any of the lots and lands of the plaintiffs in error for a sale of such lots and lands, because the amount so specially assessed against such lots, respectively, had not been paid. Said order is fully set out in the corporate answer of said West Chicago Park Commissioners.

And affiant further says that no injury or damage has resulted to the plaintiffs in error by reason of the return so made by the said John I. Straw as such collector of special assessments.

Affiant further says that he has read what purports to be an "abstract of statement and exhibits showing disregard of supersedeas and of rule to show cause," filed or proposed to be filed in the above entitled cause upon behalf of the plaintiffs in error, by George W. Wilbur and Newton A. Partridge, and that he has particularly read and considered what purports to be an order of the County Court of Cook County, set out on pages 22 and 23 of said abstract of statement and exhibits, as "Exhibit E," and

purporting to be an order entered in the County Court of Cook County on July 27, 1900, overruling certain objections filed by George W. Wilbur to the application of the County Treasurer for judgment of sale for lands delinquent for non-payment of special assessments.

And affiant says that said order so entered in said County Court on July 27, 1900, does not in any way relate to the lots and lands of the plaintiffs in error in the above entitled cause, and which are described in the order of the County Court of Cook County, set out at length in the corporate answer of West Chicago Park Commissioners, but relates to other lots for which Mr. Wilbur had filed objections, but which lots were not included in the writ of error in this cause; that the lots and lands of the plaintiffs in error were not before the County Court on the application of the County Treasurer of Cook County for a judgment of sale on July 27, 1900.

Affiant further says that, in respect to the matters and things complained of against the defendants in error herein in the petition filed by the plaintiffs in error for a rule to show cause, he has acted in good faith and without any wish, purpose or design of disobeying any lawful mandate or order of this court; and affiant further says, from his knowledge of the acts of the members of the said Board of West Chicago Park Commissioners, he does not believe that any of the members of said Board of Park Commissioners have knowingly or wilfully done anything or committed any act which was in fact or in spirit a contempt of this court, or a wilful violation of any of its orders or mandates, but that the members of said Board of Park Commissioners have in all things

been moved by what they have understood to be their duties as public officers.

FRANCIS A. RIDDLE.

Subscribed and sworn to before me by the said Francis A. Riddle this 3d day of October, 1900.

D. H. JOHNSTON,
Notary Public.

2291

No. 201.

Dft. of Chas. v. Hudson for W. C. P. Com.

Filed Jan. 21, 1901.

Office Supreme Court U. S.
FILED
JAN 21 1901
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to Supreme Court of Illinois.

(17639.)

SUGGESTIONS IN OPPOSITION TO MOTION OF PLAINTIFFS IN ERROR TO POSTPONE PRINTING OF RECORD.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL., *Plaintiffs in Error,* *vs.* WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*	Error to Supreme Court of Illinois. 17 639.

SUGGESTIONS IN OPPOSITION TO MOTION OF PLAINTIFFS IN ERROR TO POSTPONE PRINTING OF RECORD.

Plaintiffs in error seek to delay the printing of the record in this case, and the hearing thereon till after a decision is rendered in Case Number 160, pending in this court (*Cummings* v. *West Chicago Park Commissioners*), because the printing of the record in the usual course "will necessitate the expenditure of a considerable amount of money by the plaintiffs in error, which possibly may be saved to them."

They seem to expect a decision of the Cummings case (No. 160 herein) adverse to the plaintiffs in error, and must further expect to abandon this case as soon as that decision is rendered; for in no other way can the "expenditure" for printed record be "saved to them."

It is also stated in the affidavit in support of said motion that the "opinion (in the Illinois Supreme Court) in its essential particulars is based upon the decision in

Cummings v. *West Chicago Park Commissioners*, 181 Illinois, 136." That statement, although literally true, is misleading, and contains no reason for concluding that the present case in *this* court will be decided on the same grounds as the Cummings case. Indeed, we assert with confidence that quite the contrary will be the outcome; for the issues are different. In the Cummings case the objectors in the County Court and in the Illinois Supreme Court argued that the special assessment proceedings was without due process of law and was in violation of the Fourteenth amendment to the United States constitution, and their briefs now on file in that case argue that question merely. But in the present case, Number 201 (*Farrell* v. *West Chicago Park Commissioners*) that question was not raised in the County Court, was not mentioned or assigned as error in the Illinois Supreme Court, and was not passed upon either expressly or by implication in the Illinois Supreme Court; nor has it been assigned as error in this court. That was the only federal question involved in the Cummings case, and that federal question is not involved in this case. There is therefore no reason why the hearing of this case should be delayed till a decision is rendered in the Cummings case. The only federal question raised anywhere in the present record is under the "*ex post facto*" clause under Article 1, Section 10, paragraph first, of the United States Constitution, which was not mentioned in the Cummings case. (See record 77, objection 12.)

So although it is true that the decision of the Illinois Supreme Court in this Farrell case followed, on matters of state law, the decision in the Cummings case, yet the issues in this, theSupreme Court of the United States, are entirely distinct in the two cases.

2292

By this writ of error the plaintiffs in error are delaying the collection of a large and important assessment, and by this motion they are endeavoring to experiment with the court. If the Cummings case is decided in favor of the assessment these plaintiffs in error will probably abandon their appeal and save their costs; but if the Cummings case is decided adversely to the assessment these plaintiffs in error will try to bring themselves under the protection of that decision.

We respectfully submit that this court should not encourage such experiment, especially where the real matter at issue is merely the printer's fees.

Respectfully submitted.

ROBERT A. CHILDS,
CHARLES HUDSON,
Attorneys for Def't. in Error.

2292

No. 201.

Bd. of Chicago v. Nuisance for D. C.

Filed Mar. 12, 1901.

Office Supreme Court U.S.
FILED
MAR 12 1901
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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

SUGGESTIONS IN OPPOSITION TO THE MOTION OF PLAINTIFFS IN ERROR FOR LEAVE TO FILE HEREIN ADDITIONAL ASSIGNMENTS OF ERROR.

ROBERT A. CHILDS,
CHARLES HUDSON,
COUNSEL FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

Suggestions in opposition to the Motion of Plaintiffs in Error for leave to file herein Additional Assignments of Error.

I.

The only assignments of error accompanying the return into this court to the writ of error which issued to the Illinois Supreme Court are twelve in number, and are printed upon pages 78 and 79 of the printed record herein.

On the afternoon of Saturday, March 9, 1901, counsel for plaintiffs in error served a notice on counsel for defendant in error that he would on Monday, the 11th day of March, 1901, enter a motion for leave to file additional assignments of error herein, to which said notice were appended thirteen "additional assignments of error," each of which seeks to raise question not theretofore suggested in any form anywhere in the record.

II.

This is contrary to the requirement of Section 997 of the United States Revised Statutes, which provides:

"There shall be annexed to and returned with any writ of error for the removal of a cause at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors."

III.

The only error assigned upon the record in this case which in any way intimates anything in the proceedings of the state courts repugnant to the Constitution of the United States is as follows:

"10th. Said County Court erred in not granting the motion of plaintiffs in error to dismiss said proceeding on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said County Court on behalf of said plaintiffs in error, and said Supreme Court erred in sustaining said County Court."

Which error is assigned in this court for the first time, not appearing in any form in the Illinois Supreme Court. The errors assigned in the latter named court are printed upon pages 64 and 65 of the record herein.

IV.

At the time the notice of this motion was served on counsel for defendant in error the call of this court had been announced for Monday, the 11th day of March, up to and including case number 199, the next case but one

to this case. No brief or argument has as yet been filed in said cause on behalf of plaintiffs in error.

V.

Neither the revised statutes nor the rules of this court, as we understand them under construction given by this court, would permit that such assignments might now be made upon the record, even though a proper foundation has been made for such assignments in the state courts, but in this case, where not a solitary federal question was raised in the Supreme Court of the State of Illinois, as will be seen by reference to pages 64 and 65 of the printed record, there can be no basis for taking and considering said additional assignments of error.

We, therefore, respectfully ask that the said motion be denied, and if said additional assignments of error shall have been filed, we ask that they be stricken from the files.

Respectfully submitted.

ROBT. A. CHILDS,

CHARLES HUDSON,

Counsel for Defendant in Error.

Office Supreme Court U.S.
FILED
MAR 13 1901
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Clerk

No. 201.

Sup. Ct. of Illinois

D. C.

17,639.

Filed Mar. 13, 1901.

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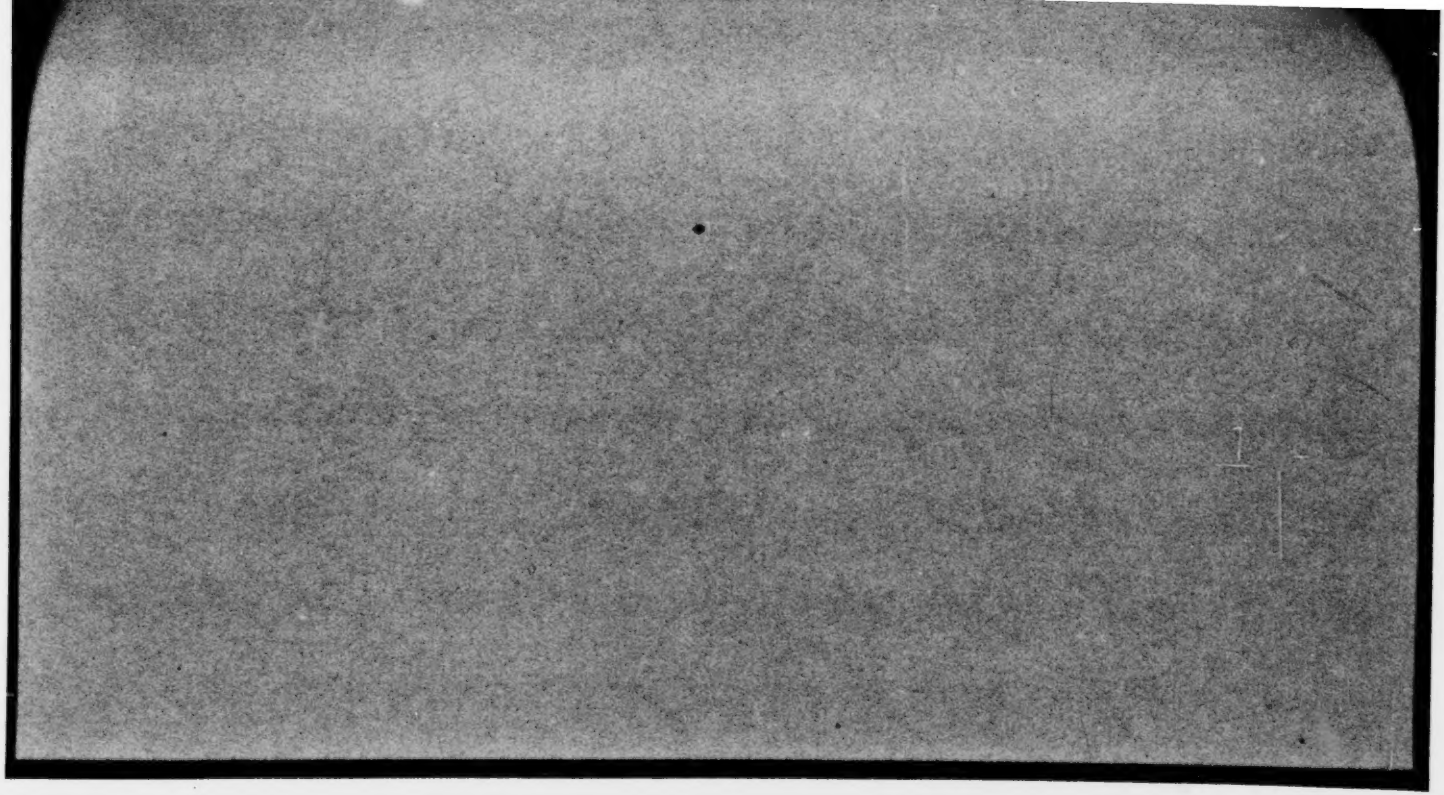
In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR,

ON ADDITIONAL ASSIGNMENTS OF ERROR.

ROBERT A. CHILDS,
CHARLES HUDSON,
COUNSEL FOR DEFENDANT IN ERROR.

Brandreth & Wilson Printers, Syracuse.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

Argument of the Defendant in Error,

On points raised by the Additional Assignments of Error.

Since this case was placed on the daily call, for hearing, the plaintiffs in error have seen fit to file additional assignments of error, eleven in number, covering some six printed pages. Some of the points now raised were anticipated in our original brief and argument, but others, raised now for the first time, were not covered.

We have already stated the "federal questions" which plaintiffs in error now seek to raise were not raised or argued in either the trial court or the Illinois Supreme Court. The only reference in the County Court to the United States Constitution, amendments thereto, or to the statutes of the United States, is contained in the twelfth objection (Pr. Rec., 19), wherein plaintiffs in error complained that the "statute under which the present proceedings are being conducted is contrary to the Constitution of the United States, and in conflict with

section 10 (first) of article 1 thereof." This is the section prohibiting "*ex post facto*" legislation by the states. In the Supreme Court of Illinois no reference whatever to any federal question was made in either the assignments of error or the decision of the court. (Pr. Rec., 64 and 68.)

These questions are, therefore, now raised for the first time, and as shown in our original brief (19–21) they are not entitled to consideration by this court. Federal questions presented for the first time in this court, are raised too late.

The new assignments of error are numbered consecutively with the old ones, probably to conceal the fact, as far as possible, that they *are* new, and to make it appear that they were filed with the original record. They were doubtless prompted by the arguments contained in our brief, in *Lombard* v. *West Chicago Park Commissioners*, No. 160, argued but a few weeks ago, where this same assessment was under consideration.

I.

PLAINTIFFS IN ERROR WERE FULLY HEARD ON THE QUESTION OF BENEFITS, AND THE JURY DETERMINED THAT THEY HAD NOT BEEN ASSESSED MORE THAN THEY HAD BEEN BENEFITED, NOR MORE THAN THEIR JUST PROPORTION OF THE COST.

Counsel refer frequently, in their brief, to the "Estimate of Cost" by which the amount to be raised by assessment was determined, and quote with great unction a sentence therein contained which indicated the approximate amount per front foot that the improvement would

cost, and conclude therefrom that "The question of benefits could not have been considered." But they carefully avoid all mention of the long trial before the jury where the question of benefits *was* carefully considered, and they forget to abstract the verdict of the jury that the plaintiffs in error "have not been assessed more than the amount of the benefits conferred." (Pr. Rec., 22.) Not the slightest mention of that jury trial or of the resulting verdict, is made, throughout their entire brief. The omission is, to say the least, significant.

Concerning that sentence in the Estimate of Cost, counsel say, "The benefits from such proceedings and the limit to the charge on separate parcels of land, are, therefore, disregarded. This was the fatal defect in the ordinance referred to in *Norwood* v. *Baker*." And in commenting on *Norwood* v. *Baker*, they quote the following: "The corporation manifestly proceeded upon the theory that the abutting property could be made to bear the whole cost of the improvement, whether such property was benefited or not to the extent of such cost."

Lest the foregoing statements of counsel for the plaintiffs in error, coupled with their omission of all reference to the jury trial, may mislead the court, we beg to refer to the record on that subject.

(*a*.) Section 1 of the ordinance for the improvement provided that it should be paid for by *special assessment* to be assessed in the manner authorized by the act of 1873. This section of the ordinance is *not* the one that was declared void. (Pr. Rec., 26.)

(*b*.) The statute of 1873 last referred to provided

that the procedure for levying the assessment, after filing the petition, should conform to that provided for levying of assessments in Cities and Villages, under Article IX of the Cities and Villages act. We print the act of 1873 in our original brief, at page 59.

(*c.*) Article IX last referred to contains a provision for a trial before jury on the question of benefits, as follows: "If it shall appear that the premises of the objectors are assessed more or less than they will be benefited, or more or less than their proportionate share of the cost of the improvement, the jury shall so find, and shall also find the amonnt for which such premises ought to be assessed, and judgment shall be rendered accordingly." We print this statute in our original brief at page 75.

(*d.*) Plaintiffs in error filed in the County Court their objection 19, as follows: "These objectors further state that their respective lots and pieces of land are not benefited by said alleged improvement to the amount of the assessment thereof, nor to any amount whatever." (Pr. Rec., 12; Rec., 33.)

(*e.*) On May 24, 1898, a jury was called and sworn to try the "question of benefits,' the objectors being represented in court by Geo. W. Wilbur, their present counsel. (Rec., 82; Pr. Rec., 21.)

(*f.*) Thereupon the jury were taken out to view the premises, May 25, 1898. (Rec., 165; Pr. Rec., 45.)

(*g.*) That same day evidence was introduced on both sides, instructions were given by the court to the jury and the jury retired to consider as to their verdict. (Rec., 183; Pr. Rec., 55.)

(*h.*) Then the jury rendered their verdict as follows: "We the jury find the issues for the petitioner herein,

and find that the property of the objectors is not assessed more nor less than it will be benefited by the proposed improvement, nor more nor less than its proportionate share of the cost of said improvement." (Rec., 83; Pr. Rec., 22.)

(*i.*) Thereupon, after motion for new trial was filed, argued and overruled, the judgment of the court was entered confirming said assessment. (Rec., 85; Pr. Rec., 22.)

From the foregoing citations of the statutes and of the record in this case it not only appears that ample *opportunity* was given to the plaintiffs in error to be heard on the question of benefits, but also that they *were in fact heard* and the issues were found against them by a jury, in the ordinary and usual way. In both respects this case differs from *Norwood* v. *Baker*, for in the Norwood case no opportunity was given to the property owners to be heard on the question of benefits, while in our case the opportunity was not only given—it was taken advantage of and the owners *were heard*.

The distinction which counsel attempts to draw between a special assessment and a special tax is, in this case the merest quibble and play upon words; for the statutes of Illinois have long authorized both special taxes and special assessments, and at the time this assessment was levied, the trial by jury of the question of benefits was guaranteed in both cases, the special tax as well as the special assessment. The provision regarding an assessment is quoted above. That regarding a special tax is found in Sec. 17 (133), of Article IX of the Cities and Villages act, and is as follows: "Provided that no special tax shall be levied in excess of the special benefits. * * * The question of benefit shall be tried in the

same manner as in proceedings by special assessment." There appears in the brief of counsel for the plaintiffs in error what purports to be a copy of this section of the statute; but this proviso, which was added in 1895, three years before the trial in the present case, is for some reason omitted. The proviso was in force when the present assessment was made, and we respectfully request the court to verify the accuracy of our quotation, and the inaccuracy of that of plaintiffs in error, by reference to the section as found in Starr & Curtiss's Rev. Stat., Ill., Ed. 1895, page 748.

What legitimate object the plaintiff in error can have in hinting, insinuating, and broadly stating that "the assessment was made in utter disregard of benefits" we cannot understand, for the exact contrary is the fact; and why they insist that they are unduly assessed, after the jury has found the contrary, we do not know. Neither does it appear by what tribunal they desire to have this question tried, if not by a jury.

We insist that this is a question of fact; that it has been tried by a jury in the usual way; that the question is not a "federal question;" and that the United States Supreme Court will not dwell to *review* the verdict of the jury, much less to set it aside.

II.

CHANGE IN IMPROVEMENT.

The 21st assignment of error, being an additional assignment filed within the last few days, is based on the allegation that the improvement as constructed differed in some details from that described in the original ordinance.

This objection was filed in the trial court, but not as a want of due process of law, or as a federal question. (Pr. Rec., 18; Obj., 5.) At the trial no evidence whatever was offered by the objectors on this point, but after the trial a very voluminous affidavit was filed in support of a motion for a new trial, which set up some alleged "newly discovered evidence" on this point. The denial of this motion by the trial court was not assigned as error in the Illinois Supreme Court, nor was any suggestion made that there was any violation in this respect of a United States Statute or the United States Constitution. (Pr. Rec., 64.)

The Illinois Supreme Court, however, in its decision says:

> "The affidavits as to the newly discovered evidence filed in support of motion presented by appellants to set aside the order overruling their motion for new trial were insufficient to entitle the appellants to a favorable decision on the motion. The testimony relied on as newly discovered, so far as it is in any way important, was contained in the ordinance, plans, specifications and estimates, which were, of course, open to the inspection of appellants, indeed, composed a part of the record in this cause, and could have been known at the time of the trial by the exercise of requisite diligence. The alleged changes in the manner of the construction of the improvement referred to in said affidavits, so far as at all material, were such only as were apparent to observation and by the exercise of even slight diligence would have come to the knowledge of every one interested." (Pr. Rec., 71.)

Furthermore, it has been held repeatedly in Illinois that a change in the manner of constructing an improvement is not an objection to the assessment, but the remedy of an aggrieved party is by mandamus against the corporate authorities whose duty it is to make the

improvements as paid for by the property owners assessed. (*Haley* v. *Alton*, 152 Ill., 113.)

So it will be seen that the change in construction (if any there was) was not valid ground for objections to the assessment even if urged in time; it did not raise any federal question; it was not urged at the trial; and the decisions of the Illinois courts concerning this objection rest on the ground that the evidence was not "newly discovered" and was therefore inadmissible.

We respectfully urge that the decision was right, and even if wrong, no federal question for this court to decide is presented.

III.

PRECEDING PETITION.

In number 19 of the additional objections recently filed, the plaintiffs in error urge that the assessment was erroneous because there was no preceding petition for the improvement by the property owners.

We do not see what federal question would be involved even if the statute or decision dispensed entirely with a preceding petition. Our attention has not been called to any provision of the United States Constitution protecting citizens against assessments without such preceding petition.

But in the present case there was such provision for petition, and the court did not disregard it. There was such petition in this particular case, and the court so finds.

The ordinance for the improvement contains the following (Pr. Rec., 25):

"Whereas, said Board of West Chicago Park

> Commissioners have also submitted to the corporate authorities of the Town of West Chicago *a petition* of the owners of a majority of the land fronting on the said proposed improvement duly verified by their engineer, and,
>
> "Whereas, the corporate authorities of the Town of West Chicago have found by inspection that said petition contains the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard or Douglas Park boulevard from the south line of Garfield Park to the west line of Douglas Park, as provided by law."

The above ordinance was introduced in evidence. (Pr. Rec., 25.) It was also attached as Exhibit D to the petition herein. (Pr. Rec., 34.)

The objectors did not then, at any time, call for the original petition nor was it offered or introduced in evidence, the court holding that the ordinance of the West Town authorities, to whom said petition was addressed, in finding that it was duly executed, was *prima facie* evidence of the fact that they had such petition.

The Illinois Supreme Court approved this reasoning, saying:

> "The (trial) court properly declined to receive oral testimony as to the contents of the petition of the consenting property holders, for the reason the petition itself was the best evidence, and its absence was not accounted for." (Pr. Rec., 69.)

And on the authority of *Cummings* v. *West Chicago Park Commissioners*, 181 Ill., 136, where the same point had been urged, it was again held that the ordinance of the West Town was *prima facie* evidence that it had received the petition as said ordinance stated.

A mere question of burden of proof, or at best a question of evidence, was involved. It was decided cor-

rectly. But even if decided erroneously, it did not involve any question of constitutional law, but only a matter of local practice.

IV.

THE DECISION OF THE ILLINOIS SUPREME COURT IN THIS CASE IS NOT A DEPARTURE FROM ITS PREVIOUS ADMINISTRATION OF ILLINOIS LAW.

Counsel have filed an additional assignment of error complaining that the decision in this case is a departure from the established construction of the Illinois constitution, in that it gave effect to the ordinance of 1893, which had previously been held "absolutely void." (New assignment of error, No. 25, brief of plaintiff in error, 56.) They argue that this new (?) doctrine is in effect legislation—judicial legislation—by which their property is taken without due process of law, and therefore violates the fourteenth amendment to the Constitution of the United States.

Our original brief made no mention of this alleged "departure" for the reason that the point had not been raised, either in the trial court, the Supreme Court or in the original assignments of error filed in this court. It is now raised for the first time, and under the established doctrine of this court it is not entitled to any consideration. It should have been presented and argued before the State Court, otherwise there is no decision "against the title, right, privileges or immunity specially set up or claimed." (Rev. Stat. U. S., Sec. 709.)

We have already shown that the ordinance in question was not wholly void, that it had not been held to be void, except in part, and that the part of the ordinance which

ordered the improvement was always held valid. The only part that was void was that section providing that the assessment should be divided into installments.

The former decisions which counsel say are departed from in this case are merely those holding that there can be no assessment without a prior ordinance ordering the improvement, and directing that an assessment be levied to pay for the same. There was such ordinance here, and those authorities are neither overruled nor questioned in this case. To that extent this ordinance was, and is, valid, and no violence whatever is done to the established doctrine previously laid down.

The cases cited by counsel for plaintiff in error to the point that a state court may not depart from its former rulings differ from the present case in at least two important particulars. First, they relate to issue of *bonds* which, being issued under one construction of the law, are held valid after the State Court has changed its ruling. The essence of the doctrine is that the bondholder is entitled to rely on the doctrine in force when he made his contract. In our case there is no bond issue and no contract.

Second. The cases cited all went up from United States Circuit Courts, and not from State Courts. In reviewing the United States Circuit Court all questions of law are reviewed, whether they present federal questions or not, while in reviewing decisions of the highest court of a state, this court reviews federal questions only. The distinction is carefully noted in *Davidson* v. *New Orleans* (96 U. S., 97). The present case is NOT an appeal from a Circuit Court of the United States, but *is* brought from the Illinois Supreme Court. Therefore,

only federal questions are involved, and this is not a federal question.

New Orleans v. *Clarke*, 95 U. S., 644, was heard on writ of error to the United States Circuit Court for the District of Louisiana, and was an action on coupons for interest on bonds.

Anderson v. *Santa Anna*, 116 U. S., 356, was heard on writ of error to the Circuit Court of the United States for the Southern District of Illinois, and was an action on bonds and coupons.

Thompson v. *Perrine*, 103 U. S., 806, was brought to this court by writ of error to the United States Circuit Court for the Southern District of New York, and was an action on coupons for interest on bonds.

Douglass v. *Pike County*, 101 U. S., 677, was brought to this court by writ of error to the United States Circuit Court for the Eastern District of Missouri, and was an action on certain interest coupons.

St. Joseph v. *Rogers*, 16 Wallace, 644, was also brought to this court by writ of error to the United States Circuit Court of Southern District of Illnois, and was an action on bonds.

Thompson v. *Lee County*, came to this court on writ of error to the Circuit Court of the United States for the District of Iowa, and was an action on county bonds.

These are all the cases cited on this point by counsel for the plaintiffs in error, and merely establish that the United States Courts will either follow their own judgment as to the legality of municipal bonds, or if they follow state decisions they will follow those decisions and that doctrine which was recognized at the time the bonds were issued rather than subsequent modifications of it. It is in the nature of the doctrine of estoppel. The

municipalities are estopped from denying the decisions of their own courts which were in force at the time they issued their bonds and made their contracts.

But there is no such question presented by the record in this case. There is no bond issue, no contract, no buying of municipal obligations, no impairment of contract, and nothing on which to hang any doctrine of estoppel.

We repeat that there is no departure from established decisions, and even if there had been the plaintiffs in error had acquired no vested rights, or contract rights, which are impaired thereby. We simply ask them to pay the amount the jury found they were benefited.

Respectfully submited.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.

22537

INDEX TO THIS BRIEF.

PAGE.

STATEMENT—

Form of action 1
Nature of pleadings 1
Leading facts in the case 6
Assignments of error 10
Importance of controversy 11

POINTS—

Federal question necessary 13
"Ex post facto" provision penal only 14
Park Act of 1895 remedial only 16
Ordinance of 1893 valid in part 16
Due process of law 17

ARGUMENT—

No federal question involved 19
Park Act of 1895 not ex post facto 22
Park Act of 1895 gave remedy merely 23
Ordinance of 1893 valid in part 25
Due process of law 30
No accurate definition of due process 31
Davidson *vs.* New Orleans 32
Spencer *vs.* Merchant 36
Bellingham *vs.* New Whatcomb 44
Norwood *vs.* Baker, distinguished 47
Steps in "Due Process" in this case 50
Scrutiny of various steps invited 53

CONCLUSION— 55

Motion that writ of error be dismissed 56

COPIES OF STATUTES—

Illinois Constitution 57
Park Act of 1873 58
Park Act of 1895 61
Cities and Villages Act, Art. IX 69
Installment Amendment 78
Revenue Act, Delinquents 80
Original Park Ordinance, 1893 88
Ordinance for New Assessment 92

22938

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 201.

THOMAS F. FARRELL ET AL., *Plaintiffs in Error,* vs. THE WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*	In Error to the Supreme Court of the State of Illinois (17,639.)

Brief and Argument of Counsel for Defendant in Error.

STATEMENT.

FORM OF ACTION.

The West Chicago Park Commissioners, a municipal corporation, levied a special assessment on property benefited, for the cost of improving the boulevard connecting Garfield and Douglas Parks. The County Court of Cook County, Illinois, confirmed said assessment, the Supreme Court of Illinois affirmed that decision, and the present plaintiffs in error bring the case to this court upon a writ of error to said Supreme Court.

NATURE OF PLEADINGS.

The defendant in error, petitioner below, filed its petition in the County Court of Cook County, Illinois, August 28, 1896 (Record, page 3), alleging that

it was the corporate authority for park purposes of the Town of West Chicago; that as such authority it had located a boulevard, prepared plans, specifications, and an estimate of the cost of improving said boulevard, to be paid for by special assessment, all in accordance with a petition addressed to said park commissioners, in writing, by the owners of a majority of the land fronting on said proposed improvement. (Record, page 4.)

The petition further recites that the plans, specifications and estimate for improving said boulevard were, by ordinance duly passed, approved and adopted by the town of West Chicago, under the statute then in force; that said town authorities instituted proceedings in said County Court against the property to be benefited by the proposed improvement, for the levy and collection of such assessment; that commissioners were thereupon appointed by the court to prepare and file in said court their assessment roll, assessing said cost upon the property deemed to be benefited; and that the same was on the eighth day of July, 1893, after full hearing, confirmed by said court.

The petition further alleges that the Supreme Court of Illinois, afterwards, on writ of error, decided that the said assessment was improperly levied, because it was divided into several installments, whereas the park and town officers had, under the provisions of the statute then in force, no authority to make an assessment which should be payable in installments, their authority being limited to assessments payable in one sum; and that by reason of said decision the assessment proceeding had failed, and the petitioner was obliged to abandon the collection of said assessment so levied.

The petition then alleges that the mode of procedure

prescribed for the levying of such assessments had been changed in 1895 by an amendment to the statute, whereby the intervention of the "West Town Authorities" had been entirely dispensed with and eliminated, and the West Chicago Park Commissioners had been substituted in their place as the proper municipal officers to file in the County Court the petition for such assessment; that said park commissioners had made an estimate of the cost of said improvement, as required by law, and had, by ordinance duly passed, ordered "That a new special assessment on the property benefited by said improvement for the amount for which the same may be legally assessed, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, * * * all in accordance with an act of the General Assembly of the State of Illinois, approved June 24th, and in force July 1, 1895."

Wherefore said petitioner prayed "That the cost of said improvement may be assessed in the manner provided by law, and in accordance with said Act." (Rec., 9.)

Such assessment roll was prepared and filed.

Plaintiffs in error thereupon filed twenty-four objections, questioning the form of the proceedings and denying that their property was benefited to the amount of the assessment. (Rec., [illegible].) 24)

In not one of these twenty-four objections is any federal question mentioned or suggested. The point is made in the 9th objection that "said petition was not in accordance with the constitution of the State of Illinois," but nothing is said about the Constitution of the United States.

Afterwards plaintiffs in error were permitted to file additional objections, and some twenty-eight more were filed on the 18th of May, 1898. (Rec., 77.)

The eleventh of these additional objections complains that "the proceedings are contrary to the Constitution of the State of Illinois"; that they "put clouds on the titles to the property of these objectors without due process of law; and because said petition and proceedings are in other respects contrary to the Constitution of the State of Illinois."

The 12th objection is as follows, in full: "The statute under which the present proceedings are being conducted is contrary to the Constitution of the United States and in conflict with Section 10 (first) of Article I thereof." (Rec., 77.)

This 12th additional objection, filed by leave of court, on the day of the hearing, was the only objection ever filed by these plaintiffs in error relating in any way to the United States Constitution or any amendment thereof. No other federal question than the one here mentioned was raised at any time in the trial court.

On May 18th, 1898, the County Court overruled the "legal objections" as they are called in Illinois, meaning thereby those tried by the court (Rec., 81), and a jury was called and impaneled to try the issues as to benefits. (Rec., 82.) The trial commenced on the 24th day of May and continued during the 25th. On the 25th the jury returned their verdict finding "the issues for the petitioners, and that the property of said objectors is not assessed more or less than it will be benefited by the proposed improvement, not more nor less than its proportionate share of the cost thereof. (Rec., 83.)

The objectors here represented filed their motion for new trial (Rec., 83), which was on the following day overruled (Rec., 85), and judgment was entered confirming said assessment.

The motion for new trial contained twenty-six alleged reasons why a new trial should be granted, but not one of them alluded to the constitution or laws of the United States or any amendment thereto. (Rec., 184.)

Upon confirmation of the assessment the objectors appealed to the Supreme Court of Illinois, where they filed nineteen assignments of error, and afterwards two additional assignments, in not one of which is made the slightest reference to the United States Constitution, or any amendment thereto, or mention made of any federal question. (Rec., 216-218.)

The Supreme Court of Illinois affirmed this judgment of the County Court of May 26, 1898, its opinion appearing in the record at page 231-236, and being reported in *Farrell at al.* v. *West Chicago Park Commissioners*, 182 Ill., 250. In that opinion no reference is made to any question arising under the Constitution of the United States or any amendment thereto, nor to any laws of or authority exercised under the United States. The decision is based entirely on other grounds.

In this court, however, the plaintiffs in error have revived their claim that the statute of 1895 was unconstitutional, and allege in their 10th assignment of error that "said County Court erred in not granting the motion of the plaintiffs in error to dismiss said proceeding on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States as set forth in objections

interposed in said County Court on behalf of said plaintiffs in error; the Supreme Court erred in sustaining the County Court." (Rec., 259.) That is the only assignment of error that purports to raise any "federal question."

LEADING FACTS IN THE CASE.

The defendant, "The West Chicago Park Commissioners," is a municipal corporation organized for the improvement and management of public parks and boulevards in the town of West Chicago, being part of the City of Chicago. By an act of the General Assembly of the State of Illinois, approved May 22, 1873, and in force July 1, 1873, appearing at 3 Starr & Curtiss Revised Statutes, Edition of 1896, pages 2862 to 2870, entitled "An Act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," provision was made for the completion and improvement of public parks and boulevards to be paid for by a special assessment upon the property to be benefited hereby. In accordance with the provisions of this act, the owners of a majority of the land fronting on Douglas boulevard, from Albany street westward and then northward to Garfield Park, in the city of Chicago, petitioned the West Chicago Park Commissioners to improve said boulevard, said improvement to be paid for by special assessment to be levied as provided in said act.

The park commissioners approved said petition, designated the line of said improvement, prepared plans, plats, specifications and estimates of the cost of such contem-

plated improvement and transmitted the same as required by section 3 of said act to the corporate authorities of said town of West Chicago. By section 3 of the act the supervisor, clerk and assessor were at that time the "town authorities" of said town. Upon the transmission and presentation of said plans, specifications and estimates the said corporate authorities on March 28, 1893, determined by ordinance duly adopted and passed by them that said improvement should be made and the expense thereof should be raised wholly by special assessment upon the property, lots and lands to be benefited thereby, and on April 7, 1893, a petition was filed in the County Court of Cook, Illinois, for the purpose of properly levying such assessment.

By the said act of 1873, it was provided that "The proceedings to levy and collect such assessment subsequent to the filing of said petition, should, in all things as near as may be, conform to the provisions of 'an act to provide for the incorporation of cities and villages,'" being the act under which ordinary special assessments for the improvements of streets were then and still are levied and collected.

When this petition was filed, the County Court appointed commissioners to assess the benefits and return their assessment roll into court, which was accordingly done, and on the 12th day of May, and 8th day of July, 1893, orders were entered in said cause confirming said assessment roll.

At the time said assessment was levied the "Cities and Village Act" above referred to, provided that special assessments might be collected by installments, the right to make such division into installments having been con-

ferred upon the city and village authorities by an amendment approved April 29, 1887, some fourteen years after the park board was authorized to adopt the provisions of said "City and Village Act" in the levying and collection of its assessments. When the first and second installments of this special assessment became due certain property owners refused to pay the assessment, their lands became delinquent, and application was made by the county collector for judgment and order of sale for the delinquent assessments, and such sale was ordered. From this judgment of sale Helen Culver, and afterwards other objectors, took an appeal to the Supreme Court of Illinois, and assigned as error the division of said assessment into installments, contending that the "City and Village Act" *as adopted* for the west park assessments did not provide for the division into installments, but that said provision was added afterwards by amendment of 1887, which did not apply to the west park assessments. This case is reported in 161 Illinois, page 89, and the Illinois Supreme Court held that "the adoption by reference in the statute of 1873, of parts of the Cities and Village Act did *not* include the subsequent amendment to such Cities and Village Act, and that therefore the park authorities were without authority to divide their assessment into installments, and the assessment as levied was, therefore, void. Upon the announcement of this decision several writs of error were filed by numerous objectors, including the present plaintiffs in error. *Farrell et al.* v. *Town of West Chicago*, 162 Ill., page 280, *Connor et al.* v. *Town of West Chicago*, 162 Illinois, page 287, all resulting in reversing the order of confirmation of the assessment.

The work on the improvement had been commenced as soon as the original order of confirmation was entered, and the improvement had been completed before the error in dividing the assessment into installments was discovered. Meanwhile by a new statute of Illinois, passed in 1895, found in Starr & Curtis' Revised Statutes, page 2907, "the power to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both," for the purpose of improving boulevards, highways, or streets under their control, which had previously been vested in the supervisor, assessor and clerk of the town of West Chicago, was transferred to the park commissioners, and the same statute of 1895, expressly adopted article IX of the Cities and Village Act and all acts amendatory thereto, for the government of the park commissiones in respect to such special assessments. This is the statute of 1895 so frequently referred to in the objections and assignments of error in this record. By its terms (Section 20, Starr & Curtis, page 2910) it conferred authority upon the park commissioners to levy, assess and collect a special assessment, where such improvement has been authorized and partly or wholly completed and the assessment therefor had been set aside by the courts. Under this authority the West Chicago Park Commissioners on August 4, 1896, passed an ordinance providing for a special assessment to pay the cost of said improvement, and a petition was filed in the County Court of Cook County August 28, 1896, for that purpose. This is the original petition in the case now before the court. On the 29th day of August, 1896, the assessment roll was filed in said case assessing the cost upon the neighboring lands according to the benefits resulting thereto from the improvement.

Numerous objections were filed against the assessment then levied, and on the 27th day of April, 1897, upon hearing of the legal objections the same were sustained, and the petition was dismissed. From this order the West Park Commissioners appealed to the Supreme Court of Illinois, *West Chicago Park Commissioners* v. *Farber et al.*, 171 Illinois, 146. The decision of the County Court was reversed and the case was remanded for further proceedings, December 22, 1897.

Being redocketed in the County Court further objections were filed by the plaintiffs in error herein, the issues were tried by a jury, and the assessment roll was confirmed. Several objectors prayed an appeal to the Illinois Supreme Court. The decisions on these appeals are found in *Cummings* v. *West. Chi. Pk. Comrs.*, 181 Illinois Reports, 136, *Culver* v. *West Chi. Pk. Comrs.*, 182 Illinois Reports, 134, and *Farrell* v. *West Chi. Park Comrs.*, 182 Illinois Reports, 250, where the judgment of confirmation was approved by the Illinois Supreme Court October 13, 1899. From this judgment affirming the judgment of the County Court this case is now brought to the United States Supreme Court by writ of error, to review the "federal questions" raised in the court below.

ASSIGNMENTS OF ERROR RAISING FEDERAL QUESTION.

The only objections or assignments of error relating in any way to the United States Constitution or laws of the United States are the following:

In the County Court—

Objection 12. "The statute under which the present proceedings are being conducted is contrary to the Con-

stitution of the United States and in conflict with Section 10 (Paragraph First) of Article I. thereof." (Rec., 77.)

In the Illinois Supreme Court—

No assignment of error in this court raises federal question.

In the United States Supreme Court—

Assignment 10. "The said County Court erred in not granting the motion of the plaintiffs in error to dismiss said proceedings on the ground that said proceedings and the statute under which the same were conducted were contrary to the Constitution of the United States, as set forth in objections interposed in said County Court on behalf of said plaintiffs in error; and the Supreme Court (of Illinois) erred in sustaining said County Court." (Rec., 259.)

There are no objections, motions for new trial, or assignments of error in this case, referring to the 14th amendment, such as were filed in the case of *Lombard et al.* v. *West Chicago Park Commissioners*, lately heard in this court as No. 160.

IMPORTANCE OF THE CONTROVERSY.

It may be presumed that the Supreme Court of Illinois, in deciding this case, gave to each of the grave and far-reaching questions involved therein, searching and complete consideration. An expenditure of over a quarter of a million dollars had been made by a municipality created by an act of the legislature, under authority of the Illinois Constitution, investing such municipality with the power and duty of making the improvement, investing it

with the power and duty of providing by ordinance for the expense of the improvement, and investing it with the power and duty of visiting the burden of the cost of such improvement, equitably upon the lands specially benefited thereby.

This taxing power was to be exercised upon the most nearly just and equitable grounds that the wisdom of the legislature had been able to devise. The proceedings for the assessment must be had before a judge elected by the people whose interests were involved; and those interests were to be protected by a jury selected from among those people; and at the hearing it is a noticeable fact that not one witness nor one objector whose name appears in this record had the hardihood to say or claim that the benefits assessed had not been received by them, and the plaintiffs in error now formally concede that fact. Some of the witnesses for the objectors testified that each lot was benefited two or three times the amount of the assessment, and if their testimony is scrutinized it will be seen that even those valuations were underestimates of the actual benefits received.

Nor has counsel, anywhere, in any court, had the temerity to argue the failure of benefits equal, or more than equal to the proposed assessment. These large expenditures were made upon the legitimate anticipation that the persons receiving, in benefits, three or four times their cost, should be required to pay for the improvement. The proposition that, all this being true, the public treasury, drained from hundreds of thousands of citizens deriving but a minimum of benefit, if any, should foot the bill, was one which, of itself, would have appealed to the Illinois Supreme Court with enough of gravity to induce a most serious consideration of every question raised against the validity of the proceedings.

POINTS.

I.

(1) "IT IS ESSENTIAL TO THE JURISDICTION OF THIS COURT OVER THE JUDGMENT OF A STATE COURT THAT IT SHALL APPEAR THAT ONE OF THE QUESTIONS MENTIONED IN THE ACT (SECTION 709 OF THE REVISED STATUTES OF THE UNITED STATES) MUST HAVE BEEN RAISED AND PRESENTED TO THE STATE COURT."

(2) "SUCH QUESTION MUST HAVE BEEN DECIDED BY THE STATE COURT OR ITS DECISION MUST HAVE BEEN NECESSARY TO THE JUDGMENT OR DECREE IN THE CASE."

(3) "IF SUCH QUESTION WAS RIGHTLY DECIDED THE JUDGMENT MUST BE AFFIRMED."

Murdock v. *Mayor, etc., of Memphis*, 87 U. S., 590.

THE UNITED STATES COURT WILL CONSIDER ONLY THE FEDERAL QUESTION; THE DECISION OF THE STATE COURT ON ALL OTHER QUESTIONS, AND ON ALL QUESTIONS OF FACT, IS FINAL AND WILL NOT BE DISTURBED.

Murdock v. *Mayor, etc., of Memphis*, 87 U. S., 590.

ALTHOUGH ONE FEDERAL QUESTION IS PROPERLY RAISED THE UNITED STATES SUPREME COURT WILL NOT CONSIDER ANOTHER FEDERAL QUESTION WHICH WAS NOT PROPERLY RAISED IN THE COURT BELOW.

Dewey v. *Des Moines*, 173 U. S., 193.

Keokuk & H. Co. v. *Illinois*, 175 U. S., 626 (1900).

NOR IS IT SUFFICIENT THAT THE FEDERAL QUESTION BE RAISED BELOW, MERELY; IT IS ALSO NECESSARY THAT "THE PLAINTIFF IN ERROR SHALL FILE AN ASSIGNMENT OF ERRORS WHICH SHALL SET OUT SEPARATELY AND PARTICULARLY EACH ERROR ASSERTED AND INTENDED TO BE URGED. * * * ERRORS NOT ASSIGNED ACCORDING TO THIS RULE WILL BE DISREGARDED."

Rule 35 of this court.

Stevens v. *Gladding et al.*, 19 How., 64.

Grape Creek Coal Co. v. *Farmers' L. & T. Co.*, 24 U. S. App., 38.

2 Encyc. Pl. & Pr., 942-3.

THE SAME RULE, REQUIRING ASSIGNMENT OF ERRORS, PREVAILS IN ILLINOIS AND IS ENFORCED WITH GREAT STRICTNESS.

Rule 11, Ill. Sup. Ct., 168 Ills., 12.

Union Mut. L. Ins. Co. v. *Kirtchoff*, 149 Ill., 536.

IT IS NECESSARY THAT THE FEDERAL QUESTION SHOULD BE RAISED BY THE ASSIGNMENTS OF ERROR IN THE STATE SUPREME COURT AS WELL AS IN THE NISI PRIUS COURT.

Dewey v. *Des Moines*, 173 U. S., 193.

II.

THE PHRASE, "EX POST FACTO," AS USED IN THE CONSTITUTION OF THE UNITED STATES, APPLIES ONLY TO PENAL AND CRIMINAL PROCEEDINGS, AND NOT TO CIVIL PROCEEDINGS WHICH AFFECT PRIVATE RIGHTS RETROSPECTIVELY.

2 Bancroft History of the Constitution, 213; cited in *Kring* v. *Missouri*, 107 U. S., 221.

Calder v. *Bull*, 3 Dallas, 386 (A. D. 1798), leading case.

Baltimore & Susquehanna v. *Nesbit*, 10 How., 401 (1850).

Locke v. *New Orleans*, 71 U. S., 172; 4 Wall., 172 (1866).

Carpenter v. *Pennsylvania*, 58 U. S., 456; 17 How., 456 (1854).

Ex Parte A. H. Garland, 73 U. S., 333 (1866).

Drehman v. *Stifle*, 75 U. S., 595 (1869).

Randall v. *Krieger*, 90 U. S., 137 (1874).

Ex Parte Sawyer, 124 U. S., 200 (1887).

Ex Parte Medley, 134 U. S., 160 (1889).

Hawker v. *New York*, 170 U. S., 189 (1897).

Thompson v. *Missouri*, 171 U. S., 380 (1897).

Stephens v. *Cherokee Nation*, 174 U. S., 445 (1898); civil act of Congress not "ex post facto," though retroactive.

12 Am. & Eng. Cyc. of Law, 2d Ed., 526.

Cooley Constitutional Law, 285.

The same prohibition contained in the Constitutions of Illinois of 1818, 1848 and 1870 has received the same construction. The limitation pertains to criminal or penal statutes only.

Ill. Const., 1818, Art. viii, Sec. 16.

Ill. Const., 1848, Art. xiii, Sec. 17.

Ill. Const., 1870, Art. ii, Sec. 14.

Coles v. *County of Madison*, 1 Ill., 154.

III.

NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY.

West Park Commrs. v. *Farber*, 171 Ill., 146, at p. 156.

MOREOVER, WHERE A NEW STATUTE HAD BEEN ENACTED EXPRESSLY TO TAKE THE PLACE OF A FORMER UNCONSTITUTIONAL STATUTE, THIS COURT HAS HELD THE NEW ACT CONSTITUTIONAL, AND HAS ENFORCED THE ASSESSMENT THEREUNDER.

Spencer v. *Merchant*, 96 U. S., 97.
Bellingham v. *New Whatcomb*, 172 U. S., 314.

THE QUESTION WHETHER THE DECISION BELOW VIOLATED THE XIVTH AMENDMENT WILL NOT BE CONSIDERED UNDER A GENERAL OBJECTION THAT THE STATUTE OF 1895 VIOLATED ART. I, SEC. 10 OF THE CONSTITUTION OF THE UNITED STATES.

Dewey v. *Des Moines*, 175 U. S., 193.
Clarke v. *McDade*, 165 U. S., 168.
Keokuk Bridge Co. v. *Illinois*, 175 U. S., 626.
Chapin v. *Fye*, 179 U. S., 127.

IV.

THE ORDINANCE OF MARCH 28TH, 1893, WAS AND IS VALID SO FAR AS TO AUTHORIZE AN ASSESSMENT; HAS BEEN SO HELD BY THE ILLINOIS SUPREME COURT; AND THE OBJECTION THERETO, BECAUSE DECLARED VOID IN OTHER PARTS, IS NOT WELL TAKEN IN LAW, AND RAISES NO FEDERAL QUESTION.

If a statute or ordinance is void in part only, the rest of

it, if separable, will be enforced, without reference to the void part.

White v. *City of Alton*, 149 Ill., 626.
Illinois Constitution, 1870, Art. 4, Sec. 13.
23 Am. & Eng. Cyc. Law, 225.
Keokuk, etc., Line v. *Keokuk*, 95 U. S., 80.
Cummings v. *West Chicago Park Commissioners*, 181 Ill., 136.

V.

"THE UNITED STATES SUPREME COURT WILL NOT UNDERTAKE TO CORRECT ERRORS OF STATE COURTS IN RESPECT TO DETAILS OF ASSESSMENTS. ITS JURISDICTION IS AT AN END IF IT FINDS THAT SUFFICIENT PROVISION HAS BEEN MADE BY THE STATE LAW FOR CONTESTING THE CHARGE WHEN IMPOSED."

Davidson v. *New Orleans*, 96 U. S., 97.

Followed by:

Kirtland v. *Hotchkiss*, 100 U. S., 491.
Kelly v. *Pittsburg*, 104 U. S., 78.
Hagar v. *Reclamation District*, 111 U. S., 701.
Head v. *Amoskeag Mfg. Co.*, 113 U. S., 9.
Wurtz v. *Hoagland*, 114 U. S., 606.
C. N. O. & T. P. R. R. v. *Kentucky*, 115 U. S., 321.
Spencer v. *Merchant*, 125 U. S., 345.
Bell's Gap R. R. v. *Pensylvania*, 134 U. S., 233.
Lent v. *Tillson*, 140 U. S., 316.
Marchant v. *Penn. R. R. Co.*, 153 U. S., 380.
Watson v. *Nevin*, 128 U. S., 578.

Roach v. *Nevin*, 128 U. S., 578.

Huling v. *Kaw Valley R. R.*, 130 U. S., 559.

Winona & St. P. Land Co. v. *Minnesota*, 159 U. S., 526.

Eldridge v. *Trezevant*, 160 U. S., 452.

Fallbrook Irr. District v. *Bradley*, 164 U. S., 112.

C. B. & Q. R. R. v. *Chicago*, 166 U. S., 226.

Castillo v. *McConnico*, 168 U. S., 674.

Backus v. *Fort St. Union Depot Co.*, 169 U. S., 557.

Bellingham R. R. v. *New Whatcomb*, 172 U. S., 314.

Dewey v. *Des Moines*, 173 U. S., 193.

Weyerhauser v. *Minnesota*, 176 U. S., 550.

McGoun v. *Ill. Tr. & Sav. Bank*, 170 U. S., 283.

ARGUMENT.

I.

NO FEDERAL QUESTION INVOLVED.

This case is brought here on writ of error to the Illinois Supreme Court under section 709 of the United States Revised Statutes. We have cited authorities to the effect that these are the only provisions under which such writ of error lies, and that under this statute the United States Supreme Court will consider only the "federal questions" properly raised, and necessarily involved in the decision of the court below. That being the law all questions of state practice, all questions of construction of the state statutes, and all questions arising under the common law will be regarded as finally determined in the Illinois Courts, and only those questions arising under the constitution or laws of the United States and decided adversely to the party claiming under them, will be argued here.

Furthermore, even if the decision on any such "federal question" is here assigned as error, it does not follow, necessarily, that such "federal question" is properly before this court, for in addition to assigning it as error in *this* court it must appear that the same (and not a different) "federal question" was properly raised in the *State* Courts, so as to be necessarily involved in the decision. *E converso*, it is not sufficient that the question should have been raised below, for it must also be as-

signed as error in this court. In other words the federal question must be (1) raised below *and* (2) assigned as error here, or it will not be considered. Neither one alone will suffice.

In the case of *Murdock* v. *Memphis* (87 U. S., 590), there is an elaborate discussion by the court, and by several distinguished *amici curiae*, concerning the proper limits to be observed by the United States Supreme Court in reviewing the judgment of the highest court of a state. It was observed that the jurisdiction to review the state court was conferred by an amendment of 1867 to the judiciary act of 1789. The act of 1789 and the amendment of 1867 are there printed in parallel columns for ready comparison. The act of 1867 now appears as Section 709 of the Revised Statutes.

By the judiciary act of 1789 it was *expressly* provided that "no other error shall be assigned or regarded as a ground for reversal in any such case aforesaid than such as appears on the face of the record and immediately respects the before mentioned questions of validity or construction of said constitution treaties, statutes, commissions or authorities in dispute."

This *express* limitation upon the power of this court to review the decision of a state court is not found in the amendment of 1867, and it was therefore argued with extraordinary ability that the limitation no longer existed; but after very careful consideration the court decided in a most learned, elaborate and exhaustive opinion in *Murdock* v. *Memphis, supra*, that it was still limited, in reviewing the state court, to the so-called "federal questions," and that in all other respects the decision and judgment of the State Court was still final.

In this record it appears that only one objection to the confirmation of assessment filed below raised a federal question.

And one only of the assignments of error in this court is based on this constitutional objection, but it will be observed that the point was not mentioned in the assignments of error in the Illinois Supreme Court, nor in the opinion of that court affirming the judgment.

Under the decisions of this court it is not sufficient that the constitutionality of the statute should have been questioned in the trial court; it must also be preserved by proper assignment of error in the highest court of the state, and must have been decided by that court adversely to the plaintiff in error before the United States Supreme Court will undertake to review it.

Even though the federal question had been raised in the Illinois Supreme Court, yet if the decision was fairly based on other sufficient grounds, the United States Supreme Court will not review the federal question; *a fortiori* it will not interfere with the decision of the state court if the federal question was not raised in that court. Section 709 of the Revised Statutes gives this court jurisdiction over decisions of the State Supreme Court only when the decision of the State Court is against the right claimed under the United States Constitution or laws. It cannot be said that the Illinois Supreme Court decided adversely to a claim which was not made before it.

Moran v. *Horsky*, 178 U. S., 205 (1899).

II.

WAS THE PARK ACT OF 1895 AN EX POST FACTO LAW?

The only provision of the Constitution of the United States mentioned in the objections filed in the County Court, or in the assignments of error in this court (none was mentioned in the Illinois Supreme Court) is Article I, Section 10, Paragraph First. This section provides that "no state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a legal tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

We think all these prohibitions may be dismissed without a word, except the "*ex post facto*" clause.

As to the clause, "No state shall * * * pass any * * * ex post facto law," it has been settled beyond the possibility of dispute, since the year 1798, when this court decided the case of *Calder* v. *Bull* (3 Dallas, 386), that this limitation upon the powers of the states concerned penal or criminal statutes only; that the several states were not, by this provision of the federal constitution, prohibited to pass retroactive laws concerning civil matters, but only laws that directly or indirectly imposed or increased a penalty for an act or crime done or committed prior to the passage of the law. Other retroactive laws may violate provisions of the state constitutions, or they may violate some other provisions of the federal constitution, but they do not come under this pro-

vision concerning *ex post facto* laws unless they concern crimes or penalties for crimes.

Calder v. *Bull*, 3 Dallas, 386 (1798).
12 Am. & Eng. Cyc. of Law, 2d Ed., 526.
Cooley Constitutional Law, 285.
Cases cited under Point II above.

III.

NO NEW RIGHT WAS CONFERRED BY THE PARK ACT OF JULY 1, 1895. THAT ACT PROVIDED A PROCEDURE ONLY.

Plaintiffs in error urge that "The act of 1895 is in conflict with the Constitution of the United States." (Rec., 259.)

We answer to this, first, no new right was conferred by the Park Act of 1895. That act provided a procedure only.

The *right* or *power* to collect an assessment, was in existence from the moment that ordinance was passed, but the method of enforcing that right was somewhat changed. Before the act, the West Town Authorities were designated as the only persons or corporation to file the petition; after that act the West Chicago Park Commissioners might take their places as petitioners. It is as if Mr. Davis, of Idaho, had been sentenced to be hanged by the sheriff of the county, and the legislature had then passed an act providing, that all executions of the death penalty should take place under the management of the worden of the penitentiary. This court has recently held that the sentence should be enforced, notwithstanding the change in the officer whose duty it was

to execute it. This case has not yet been reported. So here, it can make no possible difference to these objectors who filed the petition, so long as they had a fair hearing on the merits, and that they have had.

This point was carefully considered in *West Chicago Park Commrs.* v. *Farber,* 171 Ill., 146, at 156.

Our second answer is, that *without* the act of 1895, there was power to levy a new assessment in case the first assessment is set aside by any court. This is found in Article IX of the Cities and Villages' Act, adopted by the Park Act of 1873, for the collection of special assessments for Park Purposes. What the amendment of 1895, really did, was to permit (but not command), the substitution of the West Chicago Park Commissioners as petitioners, instead of the "West Town Authorities." This paragraph is quoted at length at the end of this brief (with the other statutes relating to this case). Inasmuch as the whole procedure of this "city and village act" for collection of assessments was expressly adopted by Park Act of 1873, for the collection of Park assessments, we insist that this provision applied to park boards.

Starr & Curtis' Rev. Statutes, Ed., 1896, p. 775.

Our third answer to this objection is, that our ordinance of 1893, was not *defective,* there was nothing *lacking,* or *wanting;* the objection to it was, that it was redundant; there was too much, and it was the redundancy that was invalid. Take away the invalid surplusage, and you have taken away no "vital" part of the ordinance. The remaining parts contain all the neces-

sary and usual provisions of a good ordinance for a special assessment.

If it had been originally passed in that form, or if the invalid part had been ignored by the County Court, there would have been no "defect" discoverable. But, instead of ignoring the invalid part, and clinging to the valid part, the County Court, as it were gave a judgment in ejectment on a bill for partition, and the Supreme Court held the judgment void.

IV.

THE OBJECTION THAT THE ORDINANCE OF 1893 WAS WHOLLY VOID, BECAUSE DECLARED VOID IN PART, IS NOT SUSTAINED BY THE GENERAL RULES FOR CONSTRUCTION OF STATUTES AND ORDINANCES, NOR BY THE DECISIONS OF THE ILLINOIS COURTS CONCERNING THIS PARTICULAR ORDINANCE, AND IT RAISES NO FEDERAL QUESTION.

Counsel complain that by the law of Illinois no assessment can be made without a prior valid ordinance; and that this ordinance was and had been declared void; that therefore, the assessment was void.

We answer,

First. The ordinance was not wholly void.

Second. The ordinance has not been *declared* wholly void.

Third. The ordinance *has* been declared valid in part.

Fourth. This court will not review that decision, but will merely consider whether, under that construction, due process of law is denied.

Fifth. The ordinance and law as applied, provided ample opportunity for a full hearing, which was had, and

not denied, and therefore, no federal question concerning due process of law is involved.

It has long been settled in Illinois, in accordance with the general principles applied elsewhere concerning construction of statutes and ordinances, that the invalidity of one part of an act or ordinance does not invalidate the rest of it, if the several portions may be separated.

Thus in *White* v. *Alton* (149 Ill., 626), there was an objection that by the ordinance for a local improvement it was provided, that one part of the cost should be levied upon a street railway by special taxation, and the balance should be assessed against the lands benefited as a special assessment. The tax was held void, but the balance was enforced. The court said:

> "It is claimed that the ordinance is void as to the levy against the horse railway company, and being void as respects that property, it is also void as respects the property of appellants. We do not concur in that view. A question of this character arose in *Wilbur* v. *City of Springfield* (123 Ill., 402), and it was there held to be a well settled principle, applicable to by-laws and ordinances, that if the provisions relating to one subject-matter be void, and as to another they be valid, and the two are not necessarily or inseparably connected, they may be enforced as to the valid portion as if the void portion had been omitted."

As regards statutes, the Illinois constitution expressly provides, that while the subject of an act must be expressed in its title, yet "if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. (Ill. Const., 1870, Art. 4; Sec., 13.)

Indeed, it is a general rule that, "part of a statute may

be unconstitutional and void, and the residue constitutional and valid." (23 Eng. & Am. Cyc. Law, 225.) And by the same reasoning it will be seen, that part of an *ordinance* may be valid even though another, disconnected, part has been declared void.

The United States Supreme court has applied this doctrine directly to the construction of an ordinance in the case of *Keokuk Co.* v. *Keokuk* (95 U. S., 80.) An ordinance of Keokuk imposing wharfage fees was in question. The court, speaking of that *ordinance*, says:

> "Statutes that are unconstitutional in part only, will be upheld so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are severable."

But not only *should* this particular ordinance be held valid in those parts that direct the levying of an assessment, but it *has been* so held by the Illinois Supreme Court.

In its opinion in *Farber* v. *West Chicago Park Commissioners*, 171 Ill., at 153, where this identical ordinance was under consideration, the court said:

> "When it becomes necessary to make a re-assessment, not because of any irregularity in the passage of the ordinance or because it fails to sufficiently describe the improvement, but solely because in a distinct section it attempted to levy the assessment in an illegal *mode*, we see no reason why the valid portions of the ordinance may not be treated as still in force, and made the basis of a proceeding for a new levy. We must hold, that only Section 2 of the original ordinance was invalid, that the ordinance furnished a proper basis for a new proceeding, and that work done and completed under such ordinance, was not done under an ordinance wholly void, so that

no power remained to pay for it by special assessment."

See also,

Davis v. *City of Litchfield*, 155 Ill., 384.

The language above quoted, was taken from a prior decision of the same court in *Freeport Street R. R.* v. *Freeport*, 151 Ill., 451. In that case there was under consideration, a re-assessment against the Street Railroad, of that part of an assessment which was declared void in *Kuehner* v. *Freeport*, 143 Ill., 92. That ordinance, declared void when the *mode of collection* was considered, was still valid as a basis for an assessment in the *proper mode*.

Applying the foregoing principles to the case at bar we find, that our ordinance of 1893 provided, in two separate sections, for two things: The first section provided, *that the improvement should be made and should be by special assessment*. The second section provided that the assessment should be devided into installments.

The Illinois courts have held, that the first section was valid, and authorized the doing of the work and the collection of *an* assessment therefor; they held the second section void, however, and therefore that particular assessment (the first one), levied in that illegal manner, was void; but they also held, that the new assessment made in the proper manner, was not void.

In other words, it was the court proceeding that was void, the mere *levying* of the assessment, and not the ordinance providing that it *should be* levied. It was the kind of judgment that was illegal, and not the ordinance providing that there should be a judgment. It is as if

the park commissioners had directed an assessment proceeding, and the court had rendered a judgment of condemnation, or as if a plaintiff had sought a money judgment on promissory notes, and the court had decreed him entitled to an annuity.

There were valid parts of the ordinance sufficient to warrant the special assessment even after the supposed condemnation decree had been declared void. As a condemnation ordinance it was void; as an installment ordinance it was void; but it was not void as an assessment ordinance, without installments. It was that *part* of the ordinance which provided for installments that was invalid, and not the *ordinance* as a whole.

Whether the Illinois Supreme Court gave the proper construction to that ordinance, or not, is not a federal question. The only federal question that will be here considered is this: Did the Act of 1895, as construed by the Illinois Supreme Court violate any provision of Article I, Section 10, Paragraph 1st, of the United States Constitution—is it an ex post facto law? If not, it violates none of the provisions of the federal constitution which the plaintiffs in error urged below in the County Court (they urged none in the Illinois Supreme Court), and the decision should be affirmed.

V.

"DUE PROCESS OF LAW" HAS COME TO MEAN, WHEN USED CONCERNING SPECIAL ASSESSMENTS, OPPORTUNITY TO CONTEST.

THE FEDERAL QUESTION INVOLVED IS WHETHER OR NOT THE LAW, AS ENACTED, PROVIDES OPPORTUNITY TO CONTEST THE ASSESSMENT BY ADVERSARY PROCEEDINGS.

WHETHER, IN THE PARTICULAR CASE, THE ASSESSMENT EXCEEDED THE BENEFITS, OR WHETHER THE ASSESSMENT WAS LEVIED BEFORE THE BENEFITS WERE RECEIVED, ARE NOT FEDERAL QUESTIONS. NOR IS ANY ATTEMPT MADE IN THIS CASE TO DENY THAT OBJECTOR'S LANDS WERE BENEFITED TO THE FULL EXTENT OF THE ASSESSMENT.

We believe that the foregoing suggestions under points 1 to 4 completely answer all that can fairly be urged in this court against the assessment proceeding now under consideration on the objections made below; but we are informed that the plaintiffs in error intend to argue all or some of the questions that were argued in the case of *Lombard et al. v. West Chicago Park Commissioners*, lately before this court as Case No. 17,575, Term No. 160. In that case several objections were made under the 14th amendment; here there were no such objections made or argued. But to show this court how ample has been the protection which the Illinois courts have given to the rights of plaintiffs in erorr and to guard against any surprise by assignment of additional errors, we here add a part of our brief in the Lombard case, concerning due process of law.

DUE PROCESS OF LAW.

It would seem that in the good year of our Lord, nineteen hundred and one it should not be necessary to resort to the highest judicial tribunal in the land to determine whether an assessment for certain improvements is by "due process of law." These words, or their equivalent, "Law of the land," appear in the Constitution of the State of Illinois adopted in 1870 (Art. II, Sec. 2), in the Illinois Constitution of 1848 (Art. XIII, Sec. 8), in the Constitution of Illinois of 1818 (Art. VIII, Sec. 8), in the ordinance of 1787 (Art. II), in the constitutions of most if not all of the United States from the time of the revolution to the present day, in the XIVth and Vth amendments to the federal constitution, and in Magna Carta itself, which provides that no freeman shall be imprisoned or disseised "nisi per legale judicium parium suorum vel *per legem terrae.*" And yet we do not know the meaning of "law of the land" or "due process of law."

In 1819 in the case of *Bank* v. *Oakley* (4 Wheat., 235) Justice JOHNSON said:

> "As to the words from Magna Carta incorporated in the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

This was before the XIVth amendment was passed and before the flood of litigation from the state courts which followed that amendment inundated the United States Supreme Court.

In 1877, Mr. Justice MILLER, in *Davidson* v. *New Orleans* (96 U. S., 97) said:

> "Most of these provisions, including the one under consideration, either in terms or in substance, have been embodied in the constitutions of the several states, and in one shape or another have been the subject of judicial construction. It must be confessed, however, that the constitutional meaning or value of the phrase, 'due process of law,' remains to-day without that satisfactory precision of definition which judicial decisions have given to nearly all the other guaranties of personal rights found in the consitutions of the several states and of the United States."

Twenty years later, in 1898, Mr. Justice MCKENNA was pleased to say, in *Orient Insurance Co.* v. *Daggs* (172 U. S., 557):

> "What it is for a state to deprive a person of life, liberty, or property without due process of law is not much nearer to precise definition to-day than it was said to be by Mr. Justice Miller in *Davidson* v. *New Orleans*, 96 U. S., 97."

We will, therefore, not undertake to define "Due Process of Law," but will be content to cite a few cases where this court has held the procedure to be in violation of the constitutional prohibition, many cases where this court has held that the constitutional provision has *not* been violated, and then endeavor to show that the case at bar falls in the latter class.

In *Davidson* v. *New Orleans* (96 U. S., 97) Mr. Justice MILLER said:

> "Is it not a little remarkable that while this provision has been in the Constitution of the United States as a restraint upon the authority of the federal government, for nearly a century, and while, during

all that time the manner in which the powers of that government have been exercised has been watched with jealousy and subjected to the most rigid criticism in all its branches, this special limitation on its powers has rarely been invoked in the judicial forum or the more enlarged theatre of public discussion.

"But while it has been a part of the constitution as a restraint upon the powers of the states only a few years, the docket of this court has been crowded with cases in which we are asked to hold that state courts and state legislatures have deprived their own citizens of life, liberty or property without due process of law. It would seem, from the character of many of the cases before us, and the arguments made in them that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him, and of the merits of the legislation on which such decision may be founded."

"As contributing to some extent to * * * determining what classes of cases do not fall within its provisions, we lay down the following proposition, as applicable to the case before us":

"That whenever, by the laws of a state or by state authority a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding with regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot be said to be without due process of law, however obnoxious it may be to other objections. It may violate some provision of the state constitution, against unequal taxation, but the Federal Constitution imposes no restraints on the state in that regard. If private property is taken for public uses

> without just compensation it must be remembered that, when the XIVth amendment was adopted, the provision on that subject in immediate juxtaposition in the Vth amendment with the one we are construing, was left out and this was taken. It may possibly violate some of those principles of general constitutional law which, if we were sitting in review of a Circuit Court of the United States, as we were in the Topeka case, 20 Wall., 655, we could take jurisdiction of. But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that where, by the laws of the state, the party aggrieved has, as regards the issues affecting his property, a fair trial in a court of justice, according to the modes of proceeding applicable to such case, that he has been deprived of that property without due process of law." (96 U. S., 97.)

The proposition laid down by Mr. Justice Miller in *Davidson* v. *New Orleans* has been followed and approved in the following cases. The objection of the aggrieved party in each case is briefly mentioned.

In *Corry* v. *Campbell*, 24 S. C., 926 (1878), (from Ohio Sup. Ct.), merely general objections were filed: "Repugnant to the XIVth Amendment to the Constitution of the United States."

In *Kelly* v. *Pittsburg*, 104 U. S., 78 (from Sup. Ct. Penn., 1881), appellant's farm lands were taxed for municipal purposes, and appraised much in excess of their true value; but an appeal to board of review was provided by the state law. Held due process.

In *Hagar* v. *Reclamation Dist.*, 111 U. S., 701 (California, 1883), appellant complained that he had no opportunity to object before or at the time the assessment was made; but as the assessment could, under California

Practice, be collected only by suit, where owners were notified and might defend, held due process of law.

In *Head* v. *Amoskeag Mfg. Co.*, 113 U. S., 9. New Hampshire Sup. Ct., appellant objected that his property was taken without due process of law for private use by being flowed for mill purposes. The court below heard evidence as to damages, and appointed commissioners to assess them. Held due process of law.

In *Wurts* v. *Hoagland*, 114 U. S., 606 (New Jersey, 1884), under a New Jersey statute, five owners of marsh lands petitioned for drainage at expense of themselves and other owners. The court appointed commissioners to determine what lands were benefited, and should be assessed, and owners had right to be heard in court. Held, due process of law.

In *C. N. O. & T. P. R. R.* v. *Kentucky*, 115 U. S., 321 (Ky. Tax Cases), the railroad complained that it was taxed in different class from other property owners, and that assessment was spread without notice to it. Held, that due process of law did not mean judicial proceedings. Notice by statute, of the meetings of the Board of Equalization was sufficient.

In *Kirtland* v. *Hotchkiss*, 100 U. S., 491, the plaintiffs in error sought to restrain the collection of a tax against his real estate in Connecticut, assessed by reason of his ownership of certain bonds. The right to tax a debt, secured by mortgage in another state, was questioned. The court quoting from *Bank* v. *Billings*, 4 Pet., 563, said:

> "This vital power (of taxation) may be abused, but the Constitution of the United States was not intended to furnish the corrective for every

> abuse of power which may be committed by the state governments." "So long as the state, by its system of taxation does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, this court, as between a citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous."

In *Spencer* v. *Merchant*, 125 U. S., 345 (N. Y. Sup. Ct., 1887), appellants objected to a special assessment because (1) it was an attempt to validate a void assessment, (2) it was exorbitant, (3) it included interest and expense of collecting parts of old assessment. This case is quite similar, in some of its facts, to the case at bar, though it goes much farther than is necessary for our purposes in sustaining the action of the State Court. A public improvement made under a statute of New York providing for such works, to be paid for by special assessment. A number of the property owners refused to pay the assessment, and as to their lots the charge was carried forward, on the tax books, as unpaid taxes, for five years, when the statute under which the assessment was levied was declared unconstitutional. Note that it was the statute that was declared unconstitutional, and not a part of an ordinance, as in the case at bar. Thereupon the New York Legislature passed a new statute directing that this specific deficiency should be reassessed upon the specific lots whose shares of the original assessment had not been paid, together with accrued interest and costs incurred in the proceedings. The appellants objected that this proceeding was repugnant to the United States Constitution, because it was an attempt

to validate a void assessment, and to levy an assessment after the work had been done under a void assessment and void statute, and that the charge was exorbitant and excessive. It was also objected that the Legislature had not left it to any jury or commissioners to determine how much money had to be raised, or on what property it should be assessed. In the case at bar it is complained that it was left to such commissioners. It seems that persons asked to pay taxes are hard to please. The court said:

> "The act of 1881 determines absolutely and conclusively the amount of tax to be raised and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the Legislature whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but is not bound to do so, and may settle both questions for itself. * * * The landowner was given a hearing, so there was no constitutional objection in that respect. Nor was that hearing illusory. We think the act was constitutional. * * * If the Legislature provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed upon his land, there is NO TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW. The statute of 1881 afforded the owners notice and hearing upon the question of the equitable apportionment among them of the sum directed to be levied upon all of them, and thus enabled them to contest the constitutionality of the statute; and that was all the notice and hearing to which they were entitled."

In *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S., 233 (1889), Pennsylvania levied a three-mill tax on the FACE VALUE of all corporate stocks and securities, to be paid for by the corporation, and kept out of dividends. Objected to on the ground that the FACE values were very divergent from the real values. Held, that "Be that as it may, the law does not make any discrimination in this regard which the state is not competent to make."

> "As to want of notice to the owners of the bonds * * * it is urged that it is a taking of the bondholders' property without due process of law. We cannot see it in this light. * * * It involves no violation of due *process* of law when it is executed according to the customary *forms* and established *usages*, or in subordination to the principles which underlie them."

In *Lent* v. *Tillson*, 140 U. S., 316 (California Sup. St., 1890), an assessment was levied to meet the cost of work done under an act of the California Legislature to widen Du Pont street, San Francisco. It was objected that one of the commissioners who made the assessment roll was an interested party, that alterations in the report were irregularly made, and that the appraisement was not fair or just. Held that none of these objections involved any federal question. Mr. Joseph H. Choate appeared for the plaintiffs in error, and A. H. Garland for the defendants in error. The court held, in regard to "due process of law," that

> "Ample opportunity was given to all persons interested to test, in a court of competent jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute. * * * If we had any doubt of the correctness of these views we should

accept the interpretation which the highest court of the state places upon the statute. * * * We must assume that inferior tribunals of the state will give effect to such enactment as interpreted by the highest court of the state." "It is contended, however, that the act was *so administered* as to result in depriving the plaintiffs of their property without due process of law. This contention is material only so far as it involves the inquiry as to whether the tribunals charged by the statute with the execution of its provisions acquired *jurisdiction* to proceed in respect to the lots or lands in question and the owners thereof. Jurisdiction was, of course, essential before plaintiff's property could be burdened with the assessment; but errors in the mere administration of the statute, not involving jurisdiction of the subject and of the parties could not justify this court, in its re-examination of the judgment of the State Court, upon writ of error, to hold that the state had deprived, or was about to deprive the plaintiffs of their property without due process of law."

In *Marchant* v. *Penn. R. R. Co.*, 153 U. S., 380 (from Penn. Sup. Ct., 1893), plaintiffs in error sought to recover for damages sustained by reason of defendant's building, and elevating its tracks along the street in front of plaintiff's lands. None of plaintiff's land was taken. The State Court held that while a plaintiff could recover for land taken, he could not recover for lands damaged under such circumstances.

This court said:

"It is sufficient for us in the present case to say that even if the plaintiff could be regarded as having been deprived of her property, the proceedings that so resulted were in due process of law. The plaintiff below had the benefit of a full and fair trial in the several courts of her own state. In those courts her rights were measured, not by laws made to affect her individually, but by general provisions of law applicable to all those in like condition."

In *Watson* v. *Nevin*, 128 U. S., 578, and *Roach* v. *Nevin*, 128 U. S., 578 (from Ky. Ct. App., 1888), appellants objected to an assessment under a statute of Kentucky providing that streets might be laid out at the cost of the abutting owners, the cost to be assessed in proportion to the areas of the abutting lots, with an addition for corner lots. The statute provided for notice by publication, and hearing of objections before the city engineer or his deputy, the tax to be enforced by the courts. The court followed *Davidson* v. *New Orleans*, and held that there was opportunity to the objectors to be heard, and therefore due process of law.

In *Huling* v. *Kaw Valley R. R.*, 130 U. S., 559, the plaintiff in error sued for trespass to lands which the defendant railroad acquired by condemnation. Plaintiff claimed that there was not due process of law, in that the railroad merely published notice that it would ask the county commissioners to lay out a right of way for it through certain sections, which was done, and the value as fixed by the commissioners paid into the county office. Held, that as opportunity was given to appear and defend, though only notice was by publication, there was due process of law.

In *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S., 526, the legislature of Minnesota enacted a statute directing its assessors to put on the tax lists property which had escaped taxation in past years. Certain railroad lands which were exempt in the hands of the railroad had been under contract several years. They were taxed. There was no notice, except by passage of the statute, but the owners appeared and defended. The Minnesota statute provided for the collection of delinquent taxes by

application to the court for judgment and tax sale, exactly as in Illinois. The court said:

> "We think this opens to the property owner full opportunity for defense and that he can raise every objection to which, in law, he is entitled. * * * Questions of this kind have been repeatedly before this court, and the rule in respect thereto often declared. That rule is that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe the XIVth amendment to the Constitution * * * if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection."

In Illinois the owner has two such opportunities—once in the assessment proceedings and again upon application for judgment of sale for delinquent assessments. Either alone would be "due process of law."

In *Eldridge* v. *Trezevant*, 160 U. S., 452 (from La., 1895), plaintiff in error complained that the defendant constructed a large levee along the banks of the Mississippi on plaintiff's lands, and that the laws of Louisiana provided no means of ascertaining or paying the damage thereby sustained. The court decided:

> "With the admission that under the state constitution and laws as construed by the highest court of the state the plaintiff was not entitled to the remedies he sought, we are requested to hold that he can obtain relief by invoking in the Circuit Court of the United States the protection of the 14th amendment to the Constitution of the United States, which declares that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * * The subject-matter of such rights and regulations falls within the control of the states, and the provisions of the 14th amendment are satisfied if, in cases like the present one, the state law, with its benefits and its obligations, is *impartially administered*."

In *Fallbrook Irr. Dist.* v. *Bradley*, 164 U. S., 112 (Cal., 1896), this was a test case in which it was claimed that a California Irrigation District law provided for the taking of property without due process of law. The case was argued by Benjamin Harrison for the appellants and Joseph H. Choate for appellees. The statute authorized supervisors to determine what land, that might be irrigated from a common source, should pay for the improvement. The Supreme Court held that the findings of the supervisors were conclusive, that "it was not constitutionally necessary in such cases to give a rehearing or an appeal." As to notice and hearing, the court decided:

> "It never was intended that this court should, as the effect of the 14th amendment, be transformed into a court of appeal where all decisions of state courts involving merely questions of general justice and equitable consideration in the taking of property, should be submitted to this court for its determination.
>
> We think the right to a hearing in regard to all these facts is given by the act, and that it has been practically so construed by the Supreme Court of California."
>
> "The first two sections provide for petition and hearing. The petition is to be signed by a majority of the holders of land capable of one mode of irrigation, etc. This petition is to be presented to the board of supervisors at their next meeting and notice of intended presentation must be published two weeks. The board shall hear the same and shall establish boundaries."
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> "Thus the act provides for a hearing of the land holders both as to the question whether his land will be benefited by the proposed irrigation, and when that has been decided in favor of the benefits, then upon the question of the valuation and assessment of and upon his land included in the district. Our conclusion is that the act as construed with reference to the objections considered under this third head is unassailable."

In *C., B. & Q. R. R.* v. *Chicago*, 166 U. S., 226 (Ill., 1896), the plaintiff in error complained that a street had been opened across its land without just compensation, the jury awarding but one dollar damages. The court, in its opinion, intimated that the right to "due process of law" included the right to "due compensation" for "private property taken for public uses," although former decisions had clearly distinguished the two rights. Thus in *Davidson* v. *New Orleans*, it was said:

> "The federal constitution imposes no restraints on the states in regard to unequal taxation. If private property be taken for public uses without just compensation it must be remembered that when the XIVth amendment was adopted the provision on that subject in immediate juxtaposition in the amendment with the one we are construing WAS LEFT OUT AND THIS WAS TAKEN."

But this C., B. & Q. case decided that, even under the new construction of "Due Process of Law," the question of benefits could be examined only by the jury, and in accordance with the course of the common law, and the assessment, or condemnation, was sustained.

In *Castillo* v. *McConnico*, 168 U. S., 674, back taxes for several years were assessed against the lands of plaintiff in error, and the only service on him was by publication of notice, using his initials instead of his Christian name, and notifying the owner "or *her* heirs."

> "The vice which underlies the entire argument of plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the 14th amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law."

Held, that the error in, or omission of the name, was a mere state matter, and raised no question under the 14th amendment.

In *Bellingham B. & B. C. R. R.* v. *New Whatcomb*, 172 U. S., 314, as in *Spencer* v. *Merchant* (125 U. S., 345), there was a re-assessment to pay for the improvement, the first assessment having been declared void. Contract for the work was let in 1890 and work completed in October of that year. An assessment was then levied on abutting property. Suit was brought to foreclose the liens thus created, but the state courts annulled the assessment on the ground that the statute under which it was assessed was void because it did not provide for hearing as to benefits. This was in 1895.

But in 1893 the legislature (of Washington) had passed a general act providing for the re-assessment of the cost of local improvements in cases where the original assessments "have been or may be directly or indirectly set aside, annulled or declared void by any court." The new statute provided for publication of notice ten days before date set for hearing before the CITY COUNCIL. The court said:

> "A re-assessment implies, not merely the fact of the improvement, but also that one attempt has been made to collect the cost and failed. Inquiry had been had in the courts and the one assessment had been set aside. The facts were known. Ten days' time does not seem unreasonably short to present objections to a re-assessment. And there is nothing in the case of the plaintiff in error to suggest any injustice. The improvements made on the street on which its lots abutted consisted in grading, planking and sidewalking. It is highly improbable that it could have been ignorant of the fact that they were being made. It MUST HAVE KNOWN ALSO THAT

SUCH IMPROVEMENTS HAVE TO BE PAID FOR, AND THAT THE ORDINARY METHOD OF PAYMENT IS BY LOCAL ASSESSMENT ON THE PROPERTY BENEFITED. Litigation followed which was carried to the Supreme Court. * * * It may be that the court was advised that the plaintiff in error had contributed to the cost of that litigation."

In *Dewey* v. *Des Moines*, 173 U. S., 193, the Iowa courts had confirmed a special assessment and adjudged the lot owners liable personally for such portion of the cost assessed as should not be paid or realized out of sale of the lands. Plaintiff in error, a non-resident, sought to enjoin the enforcement of the judgment as a personal liability. The court held that so far as a personal judgment was rendered against a non-resident, not served with process, it was unconstitutional, and reversed it to that extent only.

"The two questions, the one as to the invalidity of the personal judgment, and the other as to the invalidity of the assessment on the lots, are not in any wise necessarily connected. * * * The assessment upon the lots might be valid while the provision for a personal judgment might be void, each depending upon different principles; and the question as to the invalidity of the personal judgment might, as in this case, be raised and argued without in any manner touching the question as to the invalidity of the assessment upon the lots. * * * Upon these facts we are compelled to hold that we are confined to a discussion of the *only* federal question which the record presents, viz.: the validity of the personal judgment against the plaintiff in error."

In *Weyerhauser* v. *Minnesota*, 176 U. S., 550, plaintiff in error complained that the assessment on his property has been increased without notice to him or opportunity to defend. The governor of the state had.

under the Minnesota statute, raised the assessment on what he considered undervalued property. The court held:

> "The complaint of plaintiff in error seems to be that hearing before the governor was not provided. If the basis of this is that the owner of property must have notice of every step in taxation proceedings we agree with the Supreme Court of the state, that it is untenable. If the basis of the complaint is that the governor acted judicially and plaintiff in error was entitled to have notice, and be heard before he rendered judgment, it is also untenable. The governor does not act judicially. * * * But supposing the governor's act is a judgment; what is substantial comes afterwards; and if, against what may be detrimental in that the land owner CAN BE HEARD, he is afforded due process of law within the rule announced by the authorities. That the land owner MAY be heard is decided by the Supreme Court of the state. 'Within twenty days after the last publication of the delinquent list any person may, by answer, interpose any defense or objection he may have to the tax.'"

Please note. Just such a provision is in force in the Revenue Act of Illinois, under which this assessment will have to be collected.

> See Starr & Curtiss' Rev. Stat. Ill., Ed. 1896, page 3470, Sec. 193.

Magoun v. *Ill. Trust & Savings Bank*, 170 U. S., 283, is the Illinois inheritance tax case. The statute was alleged on writ of error to this court to be unconstitutional because estates of different amounts, and passing to relatives of different degrees of relationship, were taxed at different rates. The court quoted from Mr. Justice Field in *Mobile* v. *Kimball*, 102 U. S., 704:

> "This court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive

> state legislation. It is not necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity."

In the following cases this court has held that there was a taking of property without due process of law:

In *Roller* v. *Holly*, 176 U. S., 398, the plaintiff in error complained that judgment had been rendered foreclosing his property without his having opportunity to defend—without due process of law. He was a non-resident, and notice was served on him, personally, five days before the time named therein for him to appear and defend. It would have required four days for him to reach the place of trial, and the fifth day was Sunday. Held not due process of law.

In *C., M. & St. P. R. R.* v. *Minnesota*, 134 U. S., 418 (1889), the Minnesota legislature enacted a statute providing that its railroad commission might fix railroad tariffs which should be not merely advisory, but conclusive and binding on the railroads. The court decided:

> "No hearing is provided for, no summons or notice to the company before the commission has found what it has to find and declared what it is to declare, no opportunity for the company to introduce witnesses before the commission, in fact nothing which has the semblance of due process of law."

Even in this case Justices Bradley, Gray and Lamar dissented, and Justice Miller concurred "with some hesitation."

In *Norwood* v. *Baker*, 172 U. S., 269, the plaintiff sought in the United States Circuit Court an injunction against an assessment levied upon abutting property ac-

cording to frontage, without reference to benefits. Injunction issued.

> "The judgment of the Circuit Court must be affirmed *on the ground* that the assessment against the plaintiff's abutting property was under a rule which excluded any inquiry as to special benefits and the necessary operation of which was to take private property for public use without compensation." Mr. Justice Brewer dissented.

Please note: No question is expressly raised in the case at bar concerning any taking of private property for public use without compensation. That article of the United States Constitution was not mentioned. It is in Art. V of the amendments that the taking without just compensation is prohibited, and that prohibition is a limitation on FEDERAL authority only. The next preceding clause was taken and this one left when the 14th amendment was adopted.

Note also that in the case at bar the ordinances and statutes DID provide for hearing as to benefits, and the plaintiffs in error appeared and were heard on that point.

This last case (*Norwood* v. *Baker*) was not heard on appeal from a state court (in which case only federal questions would be considered), but it was an appeal from the United States Circuit Court for Ohio. All questions were before the court, whether federal questions or not. In fact the court considers at great length the provisions of the Ohio Constitution. It might well have been decided just as it was on either of two grounds, not involving "compensation" under the 14th amendment, first, on the ground that the proceeding was contrary to the *State* Constitution because private property was taken without compensation. The difference between the question con-

sidered in reviewing a state court and in reviewing a United States Circuit Court is noted in the *Davidson* v. *New Orleans* case, 96 U.S., 97 quoted above p. 32; second, on the ground that no hearing was provided—no "adversary proceeding," as it was called in the Davidson case—and therefore there was no due process of law. The reasons actually advanced for the decision seem to make a considerable advance on the older authorities, but do us no harm in the case at bar; for whether the objectors were entitled to merely a *hearing* as to benefits, or to the actual *payment* of the benefits they cannot complain in this proceeding for the simple reason that they have had both hearing and payment. We *believe* that they were entitled merely to "due *process*"—"due *procedure*," due "formalities," and that it rested with the state and its officers and juries to see that those forms, proceedings and processes were not denied; we believe that the Federal Constitution guarantees the forms only, and the state must protect its own people and see that those forms are converted into reality. But that belief is not an essential part of our argument nor of our case. Even though the Federal Constitution guarantees *more* than mere process, more than due proceedings, and more than mere due form—even though it guarantees to the citizens of the state "just compensation" actually paid to him, this judgment of the Illinois Supreme Court should still be affirmed, for these objectors have actually received their benefits, and more than just compensation, and the record so shows.

In one of their assignments of error the plaintiffs in error complain that this assessment was levied AFTER the improvements were made—they complain that they received their benefits *before* they were taxed for them. If

anything depends on the time for levying the assessment —whether before or after the improvement is made—it would seem that their objection would at least appear stronger if they had been taxed *before* they received their compensation. Just such objection was made in the case of *Backus* v. *Fort St. Union Depot Co.*, 169 U. S., 557, but the court there held that if *provision was made* for afterwards paying just compensation that was sufficient to meet the requirements of the Federal Constitution—that the compensation need not be paid at the time the property was taken.

We suspect that the owners taxed are sometimes hard to please. If they are taxed first, before the improvement is made, they object that their property is taken without compensation; and if the improvement is put in first, as in the case at bar, and in *Spencer* v. *Merchant* (125 U. S., 345), or *Bellingham* v. *New Whatcomb* (172 U. S., 314), they complain that the assessment is without due process of law. The two cases last mentioned decide that a re-assessment MAY be made if the first is declared void.

THE FOLLOWING ARE THE VARIOUS STEPS, IN BRIEF, WHICH HAVE BEEN TAKEN IN THE STATE COURTS BEFORE THE PRESENT ASSESSMENT WAS FINALLY CONFIRMED. THEY WOULD SEEM TO BE SUFFICIENT TO CONSTITUTE DUE PROCESS OF LAW:

(1) Illinois Constitution authorized special assessments, Art. IX, Sec. 9.

(2) Illinois Constitution, Art. VI, Sec. 18, gave County Courts jurisdiction in assessment matters.

(3) Act of 1873 incorporated the West Chicago Park Commissioners and authorized them to levy assessments. (S. & C. Rev. Stat., 2864 ff.)

(4) Act of 1895 provided method of hearing objections to assessment. (S. & C. Rev. Stat., 2907 ff.)

(5) Article IX of the Cities and Villages Act was expressly adopted for park boards to follow in court proceedings providing for petition, notice, objections, jury and hearing. (S. & C. Rev. Stat., 736 ff.)

(6) Petition by majority of the abutting owners for this improvement. (Record, page 94.)

(7) Ordinance of park board ordering the improvement made to be paid for by special assessment. (Record, p. ~~[illegible]~~ 95.)

(7) Assessment roll assessing (provisionally) the cost of the improvement according to benefits. (Record, 12 to 26.)

(9) Petition to the County Court asking to have said provisional assessment confirmed. (Record, 3.)

(10) Publication of notice of hearing five successive days—September 1st to 5th, inclusive,—announcing that hearing would be had on the 14th of September. (Record, 57.)

(11) Posting of notices August 27th for hearing September 14th. (Record, 57.)

(12) Mailing, on the 2d day of September, of notices of hearing on the 14th of September, to all known owners. (Rec., 58.)

(13) Order extending time to file objections to the 23d of September, 1895. (Record, ~~[illegible]~~ 45.)

(14) Objections filed and general appearance entered by these objectors. (Record, 29 to 44.)

(15) Further objections. (Rec., 46.)

(16) Amended objections filed by these objectors. (Record, 48.)

(18) Legal objections (as distinguished from questions of benefits which are for the jury) sustained by the County Court, April 27, 1897. (Record, 67.)

(19) Appeal by petitioners to the Illinois Supreme Court. (Record, 69.)

(20) Decision in the Illinois Supreme Court reversing and remanding. (Record, 71; 171 Ill., 146.)

(21) Petition for rehearing in the Supreme Court denied. (171 Ill., 146.)

(22) Case remanded to the County Court and reinstated. (Record, 71.)

(23) Additional objections filed *nunc pro tunc.* (Record, 74.)

(24) Order overruling all "legal objections" and directing that jury be called to try questions of benefits. (Record, 81.)

(25) Jury was selected, heard evidence during two days and rendered verdict for petitioners. (Record, 83.)

(26) Order confirming assessment. (Record, 85.)

(27) Motion for new trial (not involving any federal question) overruled. (Record, 86.)

(28) Judgment of confirmation. (Printed Record, 91)

(29) Appeal prayed and allowed to Illinois Supreme Court. (Record, 85.)

(30) Bill of exceptions signed by the court preserving evidence as to benefits not printed in the record. (See index to Printed Record showing omissions.)

(31) Assignments of error in the Illinois Supreme Court. (Record, 216-218.)

(32) Argument and hearing in the Supreme Court. (*Farrell et al.* v. *West Chicago Park Commissioners*, 182 Ill., 250.)

(33) Decision affirmed in the Supreme Court. (182 Ill., 250.) (Record, 228.)

This assessment has been before the Supreme Court of Illinois, on appeals by various parties, no less than seven times, as follows:

(1) *Culver* v. *People*, 161 Ill., 89.

(2) *Farrell* v. *Town of West Chicago*, 162 Ill., 280.

(3) *Connor* v. *Town of West Chicago*, 162 Ill., 287.

(4) *West Chi. Park Commrs.* v. *Farber*, 171 Ill., 146.

(5) *Cummings* v. *West Chi. Park Commrs.*, 181 Ill., 136.

(6) *Culver* v. *West Chi. Park Commrs.*, 182 Ill., 134.

(7) *Farrell* v. *West Chi. Park Commrs.*, 182 Ill., 250.

IN EACH AND EVERY STEP OF THIS PROCEEDING THE RIGHTS, PRIVILEGES AND IMMUNITIES OF THE PLAINTIFFS IN ERROR WERE CAREFULLY GUARDED BY DUE AND AMPLE PROCESS OF LAW.

The assessment can be defended by separating the questions into single propositions and considering each separately, as if independent, and then combining the results, and the closer the analysis and the more careful the consideration that is given to each proposition, the more apparent will it

be that our proceedings have violated no provision of the Constitution of the United states or any amendment thereof. We invite the most careful study of the Constitution of Illinois, of the statutes passed thereunder, of the ordinances of the West Chicago Park Commissioners, of the pleadings in the County Court, of the appeal to the Illinois Supreme Court, and of the careful and discriminating judgment there rendered. If in the whole course of the proceeding, during these seven years, these plaintiffs in error have been denied any constitutional right the defect has not yet been definitely pointed out to us.

If, on the other hand, counsel wish to confuse this court with a jumble of talk about "oppression" or denial of "rights to the plaintiffs" we most respectfully beg to suggest that their objections are not capable of accurate definition, and amount to no more than general dissatisfaction with the results of the litigation. As Mr. Justice MILLER said in *Davidson* v. *New Orleans* (96 U. S., 97):

> "It would seem from the character of many of the cases before us and the arguments made in them, that the clause under consideration (14th amendment) is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him and of the merits of the legislation on which such decision was founded."

VI.

CONCLUSION.

In conclusion we submit to the court:

First. That no federal question is properly before the court.

Second. That this court will not undertake to correct errors in respect to mere details of special assessments if the state court has given a fair hearing to the parties assessed.

Third. That the ordinance for the improvement was and is valid, even though the clause providing for installments was invalid.

Fourth. That the Park Act of 1895, violated no provision of the United States' Constitution, for it was merely remedial and not penal; and even if it did violate that constitution, the objection was not properly raised or considered in the Illinois Supreme Court.

Fifth. That the objectors had their full and complete measure of "due process of law" when the County Court found that their property had "not been assessed more than it had been specially benefited, and that said assessment roll should be confirmed," and they cannot now deny that they have enjoyed all the "rights, privileges and immunities" to which they were entitled under the Constitution of the United States.

Sixth. That after the repeated and exhaustive hearings, upon all the objections on behalf of plaintiffs in er-

ror, that ingenious counsel have been able to invent, in the tribunal established by the constitution and laws of Illinois, clothed with special jurisdiction of the whole subject of assessments and taxes, there can remain no question for the review of this court under the fourteenth amendment to the Constitution of the United States, or under Section 709 of the Judiciary Act of Congress.

Our motion, therefore, is that the writ of error be dismissed.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.

Copies of Statutes.

For ready reference, the two ordinances of the park authorities are here printed, with the provisions of the Illinois Constitution and Statutes concerning special assessments.

CONSTITUTION OF ILLINOIS. ART. IX. SEC. 9.

ASSESSMENTS.

Section 9. The General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property or otherwise. For all other corporate purposes all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

CONSTITUTION OF ILLINOIS. ART. VI, SEC. 18.

COUNTY COURTS.

County Courts shall be courts of record, and shall have original jurisdiction in all matters * * * for the collection of taxes and assessments and such other jurisdiction as may be provided for by general law.

Act of 1873.

(S. & C. Rev. Stat., Ed. of 1896, page 2864 ff.)

32. Proceedings for Park Improvements. § 3. In case such board of park commissioners shall desire to improve any boulevard or pleasure way under their control, or any part thereof, or if such commissioners shall deem it necessary, for drainage purposes, to construct a sewer or sewers through any lands or streets not under their control, to connect with any natural or artificial outlet, they shall make plans and specifications for such contemplated improvement. In case such contemplated improvement is the construction of a sewer, they shall carefully designate the line thereof, and shall prepare estimates of the cost of such contemplated improvement, and transmit such plans, specifications and estimates to the corporate authorities of the town where such improvement will be situated. Such corporate authorities may, upon the receipt of such plans, specifications and estimates, at their next meeting, whether the same be a regular or special meeting, or at any succeeding meeting, or at a special meeting called for that purpose, determine by ordinance, to be entered upon the records of such town, whether such improvement shall be made or not: if they shall determine to make the same, they shall also prescribe that the same shall be made by special assessment or special taxation of contiguous property: provided, that the tax authorized by section 1 of this Act shall not exceed the sum of $100,000 annually. If such ordinance shall provide that such improvement shall be wholly or in part made by special assessments, they shall direct the supervisor of such town

to file a petition in the name of the town, in the county court of his county, for proceedings to assess the cost of such improvement; such petition shall recite the ordinance for the proposed improvement and the plans, specifications and estimates of the cost thereof, and pray that the cost thereof may be assessed in the manner prescribed by law. The proceedings to levy and collect such assessment subsequent to the filing of such petition, shall in all things, as near as may be, conform to the provisions of article nine(9) of an Act of the General Assembly of this State, entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and all of the provisions of said article 9, so far as applicable, shall be in force and apply to any assessment made under this Act. The clerk of such town shall perform the duties and possess the powers which are conferred upon the clerks of cities and villages under said article 9: PROVIDED, that no improvement or sewer shall be made or constructed under the provisions of this section, except upon the petition of the owners of a majority of the land fronting on the proposed improvement or sewer: PROVIDED, FURTHER, that no sewer shall be constructed under this Act through any streets belonging to any incorporated city, or to connect with any sewers within such city, unless the assent of the common council or board of public works of such city having control of the streets and sewers of such city shall be first obtained thereto.

33. WHO ARE CORPORATE AUTHORITIES. § 4. BE IT FURTHER ENACTED, that the town supervisor, clerk and assessor of such town he and they are hereby designated and constituted the corporate authorities of such

town, and they, or a majority of them, may levy the tax or any of the assessments herein authorized, in the manner and for the purposes herein provided, except in towns or villages which may have, or which shall hereafter become organized as a town or village, under any law of this state, in which case the board of trustees of such town, so organized as a village, may levy the tax, or any of the assessments herein authorized, in the manner and for the purposes herein authorized.

2296

Act of 1895.

(S. & C. Rev. Stat., Ed. 1896, 2907, ff.)

171. Special Assessments—Special Taxes. Be it enacted by the people of the State of Illinois, represented in the general assembly: § 1. That all and any boards of park commissioners or park authorities now existing or hereafter established for the purpose of locating, establishing, inclosing, improving or maintaining any public park, boulevard, driveway, highway or street, are hereby vested with power and authority to levy, assess and collect special assessments or special taxes on contiguous property, or general taxes, or both, or otherwise, for the purpose of improving any boulevard, highway, driveway or street which may be now or may hereafter come under their control in any manner whatsoever.

172. Powers Additional to Others. § 2. The power and authority hereby vested are hereby declared to be additional to and not in limitation of any power and authority heretofore vested in said park commissioners or park authorities.

173. Ordinance. § 3. Whenever any such improvement shall be determined upon by said park commissioners or park authorities, they shall provide for the same by ordinance to be entered upon their records, and they shall by the same ordinance prescribe whether the same shall be made by special assessment or by special taxation on contiguous property, or general taxation, or both, or otherwise.

174. SPECIAL ASSESSMENTS—PROCEEDINGS. § 4. When the ordinance under which said improvement is ordered to be made shall provide that such improvement shall be made by special assessment, the proceedings for the making and levying of the same shall be as provided hereinafter in this act.

175. CHARACTER, ETC., OF IMPROVEMENT. § 5. Such ordinance providing for said improvement shall specify the nature, character, locality and description of such improvement.

176. ESTIMATE OF COST. § 6. The said park commissioners or park authorities shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials and all other expenses attending the same, and the cost of making and levying the said assessment, and shall enter a report thereof upon their records.

177. ORDER FOR PROCEEDINGS IN COURT. § 7. Upon such ordinance being passed and said report made and recorded as aforesaid, said park commissioners or park authorities may order a petition to be filed by its secretary or such other officers as it may direct in the County Court of their county for proceedings to assess the costs of such improvements in the manner provided herein.

178. PETITION. § 8. Said petition shall be in the name of said park commissioners or park authorities, and shall recite the ordinance for the proposed improvement and such report of estimate of the cost thereof, and shall pray that the cost of such improvement shall be assessed in the manner provided by law.

2296

179. ASSESSMENT. § 9. Upon the filing of such petition it shall be the duty of said commissioners or park authorities to estimate what proportion of the total cost of said improvement will be of benefit to the public and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the district, subject to the maintenance of the park or parks under the control of said commissioners or park authorities, so that each shall bear its relative, equitable proportion, and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited.

180. ASSESSMENT ROLL. § 10. The said commissioners or park authorities shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto, and in which they shall set down as against the said park district the amount they shall have found as public benefit, and they shall certify such assessment roll to the said court at least ten days before the first day of the term at which a final hearing thereon shall be had.

181. CITY SPECIAL ASSESSMENT LAWS APPLICABLE. § 11. The remainder of the proceedings in respect to such special assessment shall be in accordance with Article IX. of the act of the general assembly, entitled, "An Act to provide for the incorporation of cities and villages,"

approved April 10, 1872, and all acts amendatory thereof, so far as the same may be applicable, and all acts provided therein to be performed by the city or village shall be performed by the said park commissioners or park authorities, and all acts provided therein to be performed by commissioners to be appointed by the court shall also be performed by said park commissioners or park authorities, and where it is therein provided that the city council, or the board of trustees, in case a village, shall be named in any of said proceedings or notices or records relating thereto, the said park commissioners or park authorities shall be named instead, and like notices of said proceedings shall be given and published by said park commissioners as is therein provided, and an affidavit of one or more of said park commissioners or park authorities of the giving of notices, and a certificate of publication of notice be filed as provided therein, and the same time shall be allowed for the filing of objections to the confirmation on the part of parties interested.

182. HEARING. § 12. In such proceedings the court shall have the same powers and authority as is provided in said Article IX for proceedings thereunder, and the hearing of the application for the confirmation of said assessment shall be had in the same manner and appeals from any judgment entered thereon shall be taken to the same court and in the same manner as provided therein.

183. COLLECTION OF SPECIAL ASSESSMENT. § 13. The said assessment roll and judgment thereon shall be certified to the officer of said park commissioners or park authorities authorized to collect said special assessment in the same manner as is provided in said Article IX., and a

like notice shall be given by said collector, and said special assessment shall be collected in the same manner as provided therein, and a like report of delinquent list made to the general officer of the county authorized to collect state and county taxes, made up in the same manner as is provided therein.

184. APPLICATION FOR JUDGMENT—WHAT LAWS GOVERN. § 14. Said general officer shall proceed to obtain judgment for said delinquent special assessment in the same manner and within and at the same time as is provided in said Article IX., and shall be governed by the same laws in respect thereto as is provided for therein.

185. SALES. § 15. Sales of property for unpaid delinquent special assessments shall be made in the same manner as provided by said Article IX., and redemption from said sales shall be made in the same manner and upon the same terms and payment of the same rates as are applicable to sales therein provided for, and officers respectively making collections of said special assessment, and making sales thereunder, shall be subject to the same rules, regulations, be entitled to the same compensation and subject to the same penalties as is provided for in said Article IX.

186. PARK COMMISSIONERS MAY BUY IN. § 16. Park commissioners or park authorities interested in the collection of any tax or assessment may become a purchaser at any sale of real or personal property to enforce the collection of the same, and may, by ordinance, authorize and make it the duty of one or more officers, to be designated by them, to attend such sales and bid thereat in behalf of said park commissioners or park authorities.

187. SUPPLEMENTAL ASSESSMENTS. § 17. New special assessments and supplemental special assessments may be levied and assessed in all cases where the same are, or may be, authorized in said Article IX., and the same shall be levied, assessed and collected as is above provided in cases of original special assessments, and all the provisioning of said Article IX. for said new assessments and supplemental assessments shall apply to such proceedings to be taken hereunder.

188. CONTRACTS. § 18. All the provisions of said Article IX. in respect to contracts for making any such improvement, and for the letting of such contracts, and in respect to the lien of said special assessments, and as to the collection by suit of said special assessments, the dividing the same into installments, and interest thereon, and the collection thereof, the payments thereon, the notice thereof, the confirmation thereof, and the payment of work done for such improvement, vouchers therefor and rights of all parties thereunder, the disposition of surplus moneys arising from such special assessments, and the payments for compensation in condemnation proceedings, and advancements to pay for private property taken or damaged from the general fund of such city or village, shall each and all be applicable to such proceedings taken by said park commissioners or park authorities.

189. CONDEMNATION PROCEEDINGS—SPECIAL ASSESSMENT. § 19. Wherever any such park commissioners or park authorities shall be vested with power to take or damage private property for any purpose whatever, and shall apply to any court for the purpose of making just compensation therefor, they may file in the same proceedings a supplemental petition praying for a special as-

sessment for the purpose of raising the amount necessary to pay the compensation and damages which may be or shall have been awarded for the property taken or damaged, with the costs of the proceedings, and thereupon the court shall have power to and shall proceed as in other cases of special assessment provided for in said Article IX, and herein: PROVIDED, that all the provisions of said article in reference to the payment for lands to be taken or damaged, and the hearing by the court in respect to said payment, and in respect to ordering writs of possession or in dismissing such condemnation proceedings, shall be applicable in such case.

190. NEW ASSESSMENTS. § 20. Where, in any case such park board or park authorities having authority to improve any street or streets , or parts thereof, and to pay for the improvement thereof by special assessment, and said improvement shall have been made or partly completed, and a special assessment levied therefor shall have been set aside by a court of competent jurisdiction, or the provision in any ordinance for the payment for said improvement by special assessment shall have failed or been declared void by any court of competent jurisdiction, then, and in any such case, the said park commissioners or park authorities are hereby vested with power to levy, assess and collect a new special assessment on property benefited by said improvement or completed portion thereof, in the same manner as in other cases, and the lots, blocks, tracts or parcels of land found benefited by said improvement or the completed portion thereof, shall each severally be liable to pay for said benefits to the same extent and in the same proportion as in other cases: PROVIDED, that

the provisions and all proceedings in respect to such new assessments shall relate to and be in force in all cases in which, at the time of the passage of this act, work has been completed or partially completed under any special assessment proceedings or attempted special assessment proceedings heretofore levied or collected or attempted to be levied and collected by any such board of park commissioners or park authorities: AND, PROVIDED FURTHER, that such new assessments in such cases shall be levied within seven years from the date of confirmation, or attempted confirmation, of such original proceedings.

191. ALLOWANCE OF CREDITS. § 21. In such proceedings for any new assessment, it shall be the duty of the said commissioners to credit on the assessment roll, at or before filing the same in court, all payments that may have been made on any previous assessment or installments thereof for said improvement by, for or on account of any lot, block, tract or parcel of land assessed therein, whether paid by sale thereof or otherwise, and any objections to the confirmation of such assessment roll shall include objections to the allowance of credits as appears by said assessment roll, if any there be.

192. LEVY, ASSESSMENT AND COLLECTION — HOW MADE. § 22. When the ordinance under which said improvements are ordered to be made shall provide that such improvement shall be made by special taxation of contiguous property, the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments.

ARTICLE IX. OF THE CITIES AND VILLAGES ACT.
(Rev. Stat., 736, ff.)

117. POWERS CONFERRED. § 1. That the corporate authorities of cities and villages are hereby vested with power to make local improvements by special assessment or by special taxation, or both, of contiguous property, or general taxation, or otherwise, as they shall by ordinance prescribe.

118. ORDINANCE AUTHORIZING IMPROVEMENTS—CONTENTS. § 2. When any such city or village shall, by ordinance, provide for the making of any local improvement, it shall, by the same ordinance, prescribe whether the same shall be made by special assessment or by special taxation of contiguous property, or general taxation, or both.

133. SPECIAL TAX, HOW COLLECTED. § 17. When said ordinance under which said local improvement shall be ordered shall provide that such improvement shall be made by SPECIAL TAXATION of contiguous property the same shall be levied, assessed and collected in the way provided in the sections of this act providing for the mode of making, levying, assessing and collecting special assessments; * PROVIDED, that no special tax shall be levied or assessed upon any property to pay for any local improvement in an amount in excess of the special benefit which such property shall receive from such improvement. Such ordinance shall not be deemed conclusive of such benefit, but the question of such benefit and of the amount of such special tax shall be subject to the review and determination of the County Court, and be tried in

the same manner as in proceedings by special assessment."

(NOTE.— Amendment of 1895 added the part after asterisk.)

134. HOW MADE. § 18. When the ordinance under which said local improvement is ordered to be made shall provide that such improvement shall be wholly or in part made by special assessment, the proceedings for the making such special assessment shall be in accordance with the sections of this act (article) from 18 to 51, inclusive.

135. ORDINANCE FOR LOCAL IMPROVEMENTS—SIDEWALKS—OWNERS' RIGHTS. § 19. Whenever such local improvements are to be made wholly or in part by special assessment, the said council in cities, or board of trustees in villages, shall pass an ordinance to that effect, specifying therein the nature, character, locality and description of such improvement, either by setting forth the same in the ordinance itself or by reference to maps, plats, plans, profiles or specifications thereof on file in the office of the proper clerk, or both: PROVIDED, that whenever any such ordinance shall provide only for the building or renewing of any sidewalk, the owner of any lot or piece of land fronting on such sidewalk shall be allowed fifteen days after the time at which such ordinance shall take effect in which to build or renew such sidewalk opposite his land, and thereby relieve the same from assessment: PROVIDED, that the work so to be done shall in all respects conform to the requirements of such ordinance.

136. COMMISSION TO ESTIMATE COST. § 20. The city council or board of trustees shall appoint three of its mem-

bers, or any other three competent persons, who shall make an estimate of the cost of the improvement contemplated by such ordinance, including labor, materials, and all other expenses attending the same, and the cost of making and levying the assessment, and shall report the same in writing to said council or board of trustees.

137. REPORT—APPROVAL—ORDER FOR PETITION.—§ 21. On such report being made, and approved by the council or board of trustees, as the case may be, it may order a petition to be filed by such officer as it shall direct, in the County Court of its county, for proceedings to assess the cost of such improvement in the manner provided in this act.

138. PETITION BY MUNICIPALITY — CONTENTS. § 22. The petition shall be in the name of the corporation, and shall recite the ordinance for the proposed improvement and the report of such commission, and shall pray that the cost of such improvement may be assessed in the manner prescribed by law.

139. APPOINTMENT OF COMMISSIONERS — OATH. § 23. Upon the filing of such petition the court shall appoint three competent persons as commissioners, who shall take and subscribe an oath, in substance as follows:

STATE OF ILLINOIS, } ss.
——— COUNTY. }

We, the undersigned, commissioners, appointed by the County Court of ..... County, to assess the cost of ..... (here state in general terms the improvement), do solemnly swear (or affirm, as the case may be), that we will a true and impartial assessment

make of the cost of said improvement upon the city (or village) of ....., and the property benefited by such improvement, to the best of our ability, and according to law.

140. DUTY OF COMMISSIONERS—ASSESSMENT OF BENEFITS. § 24. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made, and the lots, blocks, tracts and parcels of land that will be specially benefited thereby, and to estimate what proportion of the total cost of such improvement will be of benefit to the public, and what proportion thereof will be of benefit to the property to be benefited, and apportion the same between the city or village and such property, so that each shall bear its relative equitable proportion; and having found said amounts, to apportion and assess the amount so found to be of benefit to the property upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be severally benefited by such improvement: PROVIDED, that no lot, block, tract or parcel of land shall be assessed a greater amount than it will be actually benefited: AND, PROVIDED, FURTHER, that it shall not be necessary for said commissioners to examine the locality except where the ordinance provides for the opening, widening or improvement of streets and alleys.

141. MAP. § 25. (Repealed by L. 1873, p. 66, April 25, July 1.)

142. ASSESSMENT ROLL—RETURN. § 26. They shall also make or cause to be made an assessment roll, in which shall appear the names of the owners, so far as known, a description of each lot, block, tract or parcel of land, and the amount assessed as special benefits thereto,

and in which they shall set down as against the city or village the amount they shall have found as public benefit, and certify such assessment roll to the court by which they were appointed, at least ten days before the first day of the term at which a final hearing thereon shall be had.

143. NOTICE OF ASSESSMENT BY MAIL—POSTING AND PUBLICATION. § 27. It shall also be the duty of such commissioners to give notice of such assessment, and of the term of court at which a final hearing thereon will be had, in the following manner:

First. They shall send by mail to each owner of premises assessed, whose name and place of residence is known to them, a notice substantially in the following form:

Mr. ..... Your (here give a short description of the premises) is assessed $..... for public improvement. The assessment roll will be returned to the ..... term of the ..... court of ..... County (here give date).

.....
Commissioners.

Second. They shall cause at least ten days' notice to be given, by posting notices in at least four public places in such city or village, two of which shall be in the neighborhood of such proposed improvement; and when a daily newspaper is published in such city or village, by publishing the same at least five successive days in such daily newspaper, or if no daily newspaper is published in such city or village, and a weekly newspaper is published there, then at least once in each week for two successive weeks, in such weekly newspaper, or if no daily or weekly newspaper is published in such city or village, then at least

once in each week for two successive weeks in a newspaper published in the county in which such city or village is situated. The notice may be substantially as follows:

SPECIAL ASSESSMENT NOTICE.

Notice is hereby given to all persons interested that the city council (or board of trustees, as the case may be), of ..... having ordered that (here insert a brief description of the nature of the improvement), the ordinance for the same being on file in the office of the ..... clerk, have applied to the ..... Court of ..... County for an assessment of the cost of said improvements, according to benefits, and an assessment thereof having been made and returned to said court, the final hearing thereon will be had at the ..... term of said court, commencing on .... day of ....., A. D. 18.. All persons desiring, may then and there appear and make their defense.

(Here give date.)

.....
Commissioners.

144. PROOF OF NOTICE. § 28. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent or caused to be sent by mail, to the owners whose premises have been assessed, and whose name and place of residence are known to them, the notice hereinbefore required to be sent by mail to owners of premises assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notices required by this act to be posted, setting forth when and in what manner the same were posted. Such affidavit shall be received as

prima facie evidence of a compliance with this act in regard to giving such notices. They shall also file a certificate of publication of said notice in like manner as is required in other cases of publication of notices.

145. CONTINUANCE WHEN NOTICE NOT IN TIME. § 29. If ten days shall not have elapsed between the first publication or the putting up of such notices and the first day of the next term of such court, the hearing shall be continued until the next term of court.

146. OBJECTIONS TO REPORT—DEFAULT. § 30. Any person interested in any real estate to be affected by such assessment, may appear and file objections to such report, and the court may make such order in regard to the time of filing such objections as may be made in cases at law in regard to the time of filing pleas. As to all lots, blocks, tracts and parcels of land to the assessment of which objections are not filed within the time ordered by the court default may be entered, and the assessment confirmed by the court.

147. HEARING—FURTHER EVIDENCE—JURY. § 31. On the hearing, the report of the commissioners shall be competent evidence, and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, and if it shall appear that the premises of the objector are assessed more or less than they will be benefited, or more or less than their proportionate share of the cost of improvement, the jury shall so find, and also find the amount for which such premises ought to be assessed, and judgment shall be rendered accordingly.

148. TRIAL AT LAW OR PROBATE TERM—PRECEDENCE. § 32. The hearing in all cases arising under

this act may be had at either a law or a probate term of said court, and shall have precedence over all cases in such court except criminal cases.

149. ASSESSMENT MODIFIED, RECOMMITTED OR ANNULLED. § 33. The court before which any such proceeding may be pending, shall have authority, at any time before final *adjournment* (judgment), to modify, alter, change, annul or confirm any assessment returned, as aforesaid, or cause any such assessment to be recast by the same commissioners whenever it shall be necessary for the attainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed, for the purpose of making such assessment, or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this act, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises.

150. JUDGMENT SEVERAL—APPEAL—LIEN. § 34. The judgment of the court shall have the effect of a several judgment as to each tract or parcel of land assessed, and any appeal from such judgment or writ of error shall not invalidate or delay the judgment, except as to the property concerning which the appeal or writ of error is taken. Such judgment shall be a lien upon the property assessed, from the date thereof until payment shall be made.

162. VACATION OF ASSESSMENT—NEW ASSESSMENT. § 46. If any assessment shall be annulled by the city council or board of trustees, or set aside by any court, a

new assessment may be made and returned, and like notive given and proceedings had, as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or board of trustees and court shall perform like duties and have like power in relation to any subsequent assessment, as are hereby given in relation to the first assessment.

163. SUPPLEMENTAL ASSESSMENTS. § 47. If, in any case, the first assessment prove insufficient, a second may be made in the same manner, as nearly as may be, and so on, until sufficient moneys shall have been realized to pay for such public improvement. If too large a sum shall, at any time, be raised, the excess shall be refunded ratably to those by whom it was paid.

AMENDMENT OF 1887 AS AMENDED IN 1891.
(S. & C. Rev. Stat., 1896, 781, ff.)

170 a. SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS MAY BE PAID IN INSTALLMENTS. § 55. That the amount of any special assessment for any local improvement in any city, incorporated town or village may be divided into installments, when so provided for by the ordinance providing for the said improvement, the first of which shall not exceed the sum of twenty-five per cent. of the total of said assessment, and which shall be due and payable from and after confirmation of said assessment. The remaining portion of said assessment, after deducting the said first installment, shall be divided into four equal annual installments, which said installments shall be payable annually thereafter, and colected in the same manner that other assessments are now collected, and the annual interest, herein provided for, on all of said installments which may at any time remain unpaid, shall also be payable annually thereafter and collected in the same manner that other assessments are now collected. Each of said four last named installments shall bear interest at the rate of six per cent. per annum, payable in each year, from and after the first day of July next succeeding the confirmation of said assessment, when such confirmation shall be had between the first day of November and the first day of March; and when such confirmation is had between the first day of March and the first day of July, then each of said four last named installments shall bear interest at the rate of six per cent. per annum in each year, from and after the first day of October next succeeding such confirmation of assessment; and when such

confirmation is had between the first day of July and the first day of November, then each of said four last named installments shall bear interest at the rate of six per cent. per annum, from and after the first day of January next succeeding such confirmation of assessment. Such interest shall be payable in each year at the time when the installments are payable; PROVIDED, that in cities containing a population of fifty thousand or more this and the following sections shall not apply except in cases where any such special assessments shall exceed in the aggregate the sum of fifteen thousand dollars.

ILL. REVENUE ACT.

(S. & C. Rev. Stat., 3464.)

184. ADVERTISEMENT. § 182. At any time after the first day of April next after such delinquent taxes and special assessments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, in a newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the County Court at the ..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the ..... Monday next succeeding the day fixed by law for the commencement of such term of the said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed

to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.

187. APPLICATION FOR JUDGMENT—COUNTY COURT—TERM. § 185. That all applications for judgment and order of sale for taxes and special assessments on delinquent lands and lots shall be made at the June term of the County Court. If from any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued, and it shall not be necessary to readvertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter the court shall hear and determine the matter, and if judgment is rendered, the sale shall be made on the Monday specified in the notice as provided in section 182, such Monday to be fixed by the county collector in the notice. If for any cause the collector is prevented from obtaining judgment at said term, it shall be held to be legal to obtain judgment at any subsequent term of said court, but if the failure arises by the county collector's not complying with any of the requirements of this act, he shall be held on his official bond for the full amount of all taxes and special assessments charged against him: PROVIDED, that any such failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to a rendition of a judgment against any delinquent lands or lots included in the application of the county collector:

AND, PROVIDED, FURTHER, that on the application for judgment at such subsequent term, it shall not be deemed necessary to set forth or establish the reasons of such failure: AND, PROVIDED, FURTHER, that in counties where probate courts have been or may hereafter be established, it shall be lawful to make such application for judgment and order of sale to the May term of the County Court.

188. PUBLICATION OF LIST—PAPERS FURNISHED COUNTY—PUBLISHER'S CERTIFICATE—FEE. § 186. The printer, publisher or financial officer or agent of the newspaper publishing the list of delinquent lands and lots, shall transmit, by mail or other safe conveyance, to the collector, four copies of the paper containing said list, to one of which copies he shall attach his certificate, under oath, of the due publication of the delinquent list for the time required by law (which copy shall be presented by the collector to the County Court at the time judgment is prayed), and said copy shall be filed as part of the records of said court. Upon receipt of said papers, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the auditor, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices.

190. DELINQUENT LIST—FORM AND CONTENTS. § 188. The collector shall transcribe into a book prepared for that purpose, and known as the tax, judgment, sale, redemption and forfeiture record, the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be re-

corded, at least five days before the commencement of the term at which application for judgment is to be made; which book shall set forth the name of the owner, if known; the proper description of the land or lot, the year or years for which the tax or special assessments are due; the valuation on which the tax is extended; the amount of the consolidated and other taxes and special assessments; the costs and total amount of charges against such land or lot. Said book shall also be ruled in columns, so as to show the amount paid before the rendition of the judgment, the amount of judgment, and a column for remarks, the amount paid before sale and after the rendition of said judgment, the amount of the sale, amount of interest or penalty, amount of cost, amount forfeited to the state, date of sale, acres or part sold, name of purchaser, amount of sale and penalty, taxes of succeeding years, interest and when paid, interest and cost, total amount of redemption, date of redemption, when deed executed, by whom redeemed, and a column for remarks, or receipt, of redemption money.

193. Proceedings in Court—Order for Sale. § 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection), be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary matter, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or spe-

cial assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown, why judgment should not be entered against said lands and lots for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the people of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having

been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned.

194. APPEALS. § 192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the people of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment, and cost which may finally be adjudged against the real estate involved in an appeal by any court having jurisdiction in the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas, unless the party praying such appeal or desiring such a writ of error, shall before taking such appeal or suing out such writ of error, deposit with the

county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal or suing out a writ of error, the judgment shall be affirmed in whole or in part, the Supreme Court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent., and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the Supreme Court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the Supreme Court, and to account for the same as collected taxes. If the judgment of the County Court shall be reversed and the cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, or a writ of error prosecuted with SUPERSEDEAS issued thereon, as herein provided, the clerk of the County Court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an addi-

tional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or representatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made.

Ordinance of Corporate Authorities of 1893.
(Printed Rec., p. 41.)

An Ordinance of the corporate authorities of the town of West Chicago for the improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas Park, in the city of Chicago, town of West Chicago, County of Cook and State of Illinois.

Whereas, The West Chicago Park Commissioners have under their control a certain boulevard or pleasureway known as Douglas boulevard, or Douglas Park Boulevard, lying and situate between the south-easterly line of Garfield Park (formerly known as Central Park) and running thence south for a distance of 4,250 feet, more or less, to a point in Sec. 23, T. 39 N., R. 13 E. of 3d P. M., and thence due east a distance of 4,490 feet, more or less, to its intersection with the west line of Douglas Park, in the city of Chicago, town of West Chicago, which is a boulevard or pleasureway regularly laid out and under the management and control of the said West Chicago Park Commissioners for park and boulevard purposes, and lying within the park district or territory, subject to taxation for park and boulevard purposes; and,

Whereas, Said West Chicago Park Commissioners desire to improve said boulevard, and have officially notified the corporate authorities of the town of West Chicago of that desire, and have, by proper order duly entered upon their records, directed their attorney to prepare a proper ordinance in accordance with the plans,

specifications and estimates of the cost of the improvement of said Douglas boulevard or Douglas Park boulevard, to present the same to the town authorities of the town of West Chicago, for action; and,

WHEREAS, Said West Chicago Park Commissioners have made plans, specifications and estimates of the cost of such contemplated improvement, and have transmitted to the corporate authorities of the town of West Chicago the plans, specifications and estimates of the cost of such improvement as provided by law; and

WHEREAS, Said board of West Chicago Park Commissioners have also submitted to the corporate authorities of the town of West Chicago, a petition of the owners of a majority of the land fronting on the said proposed improvement, duly verified by their engineer; and,

WHEREAS, The corporate authorities of the town of West Chicago have found by inspection that said petitions contain the duly authenticated signatures of the owners of a majority of the land fronting on Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as provided by law;

NOW, THEREFORE, be it ordained by the town authorities of the town of West Chicago, consisting of the town supervisor, town clerk and assessor of said town duly designated and constituted by an act of the General Assembly of the State of Illinois, entitled, "An act in regard to the completion, improvement and management of public parks and boulevards, and to provide a more efficient remedy for the collection of delinquent assessments," approved May 2, 1873, in force July 1, 1873, the corporate authorities of said town for such purpose:

SECTION 1. That the improvement of the sixty feet on the outside and on each side of said Douglas boulevard, or Douglas Park boulevard, from the south line of Garfield Park to the west line of Douglas Park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to the corporate authorities of the town of West Chicago shall be made, and that the cost thereof, together with the cost of making and collecting the assessment to be made therefor, shall be paid by special assessment upon the contiguous property abutting on said boulevard so to be improved in the manner provided by law and in accordance with such plans, specifications and estimates.

SECTION 2. That said special assessment shall be divided into installments and that the first of said installments shall be 20 per cent. of the total amount of said assessment, and that the deferred installments shall bear interest at the rate of 6 per cent. per annum, as provided by law.

SECTION 3. The improvement hereby provided for shall be made for and under the superintendence, supervision and direction of the West Chicago Park Commissioners. All portions of the sixty (60) feet on the outside and on each side of said boulevard shall be brought to the established grade of said boulevard, except as hereinafter otherwise provided. All and any portion thereof below the line to which it is required to be brought by the provisions of this ordinance, shall be filled with clay, earth, sand gravel or cinders free from all foreign and decaying substances, and all trenches dug in any portion of either of said sixty (60) foot spaces and all fresh

filling shall be flushed with water and rammed or rolled with a steam roller to a final compression in the manner directed by the engineer of the West Chicago Park Commissioners.

SECTION 4. That the supervisor of the town of West Chicago proceed at once to file a petition in the name of the town in the County Court of Cook County for proceedings to assess the cost of the improvement herein provided for, acting therein under and by the direction of the attorney of the West Chicago Park Commissioners, and in conformity with the laws of the State of Illinois, in such case made and provided.

SECTION 5. This ordinance shall be in force and take effect from and after its passage.

Ordinance of 1896.

(Pr. Rec., 50.)

For a special assessment for the cost of the boulevard improvement of Douglas boulevard (or Douglas Park boulevard) from the south-easterly line of Garfield Park (formerly known as Central Park) to the west line of Douglas park, in the town of West Chicago, in the city of Chicago, county of Cook, and State of Illinois.

Be it ordained by the West Chicago Park Commissioners in regular meeting assembled:

Sec. 1. That whereas, the corporate authorities of the town of West Chicago passed an ordinance on March 28, 1893, for the making of a boulevard improvement on Douglas boulevard or Douglas Park boulevard, from the south-easterly line of Garfield park to the west line of Douglas park, as desired to be made by the West Chicago Park Commissioners, and as shown by the plans, specifications and estimates transmitted by said West Chicago Park Commissioners to said corporate authorities of the town of West Chicago, and which ordinance provided that the cost of said improvement, together with the cost of making and collecting the special assessment to be made therefor, should be paid for by a special assessment upon the property benefited by such improvement; and

Whereas, certain proceedings were instituted by the corporate authorities of said town of West Chicago, in the County Court of Cook County, on April 7, 1893, for the levying of a special assessment for the cost of said improvement, in pursuance of said ordinance, as case No. 10655 of said court; and

Whereas, the said boulevard improvement has been heretofore made and completed; and

Whereas, the said special assessment proceedings in said County Court above mentioned, and the provisions of said ordinance for the payment of said improvement have been heretofore, and on the 2d day of March, A. D. 1896, declared void by the Supreme Court of Illinois, a court of competent jurisdiction, and the provisions of said ordinance for said special assessment have failed; and

Whereas, said boulevard improvement provided for in said ordinance included asphalt roadways, leveling, stone sidewalk, black earth filling, common filling, grass plats, sodding, lamp posts, trees, catch-basins, sewers and superintendence of work; now

Therefore, be it ordained:

Sec. 2. That a new special assessment on the property benefited by said improvement, to the amount that the same may be legally assessed therefor, be levied to pay the cost of said boulevard improvement above specified, and the remainder of such cost be paid by general taxation, viz.: from the general funds of this board, all in accordance with an act of the General Assembly of the State of Illinois, entitled "An Act to enable park commissioners or park authorities to make local improvements and provide for the payment therefor," approved June 24th and in force July 1, 1895.

Sec. 3. That an estimate of the cost of said improvement be made by this commission and spread of record.

Sec. 4. This ordinance shall be in force from and after its passage.

Respectfully submitted.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.

No. 201.
Reply Brf. of Childs & Hudson for D.C.
Filed Mar. 27, 1901.

Office Supreme Court U.S.
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JAMES H. McKENNEY,

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

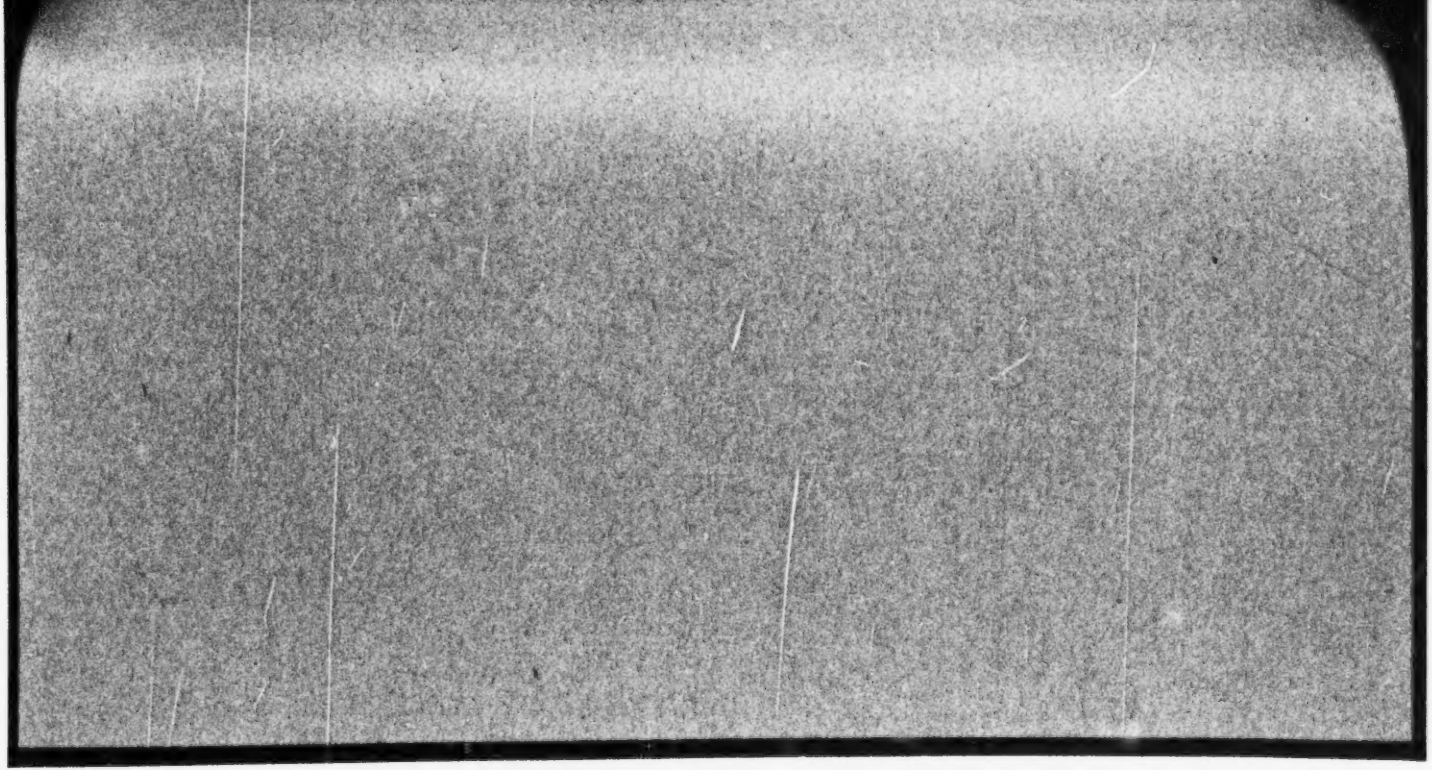
No. 201.

THOMAS F. FARRELL ET AL., *Plaintiffs in Error,*
vs.
WEST CHICAGO PARK COMMISSIONERS, *Defendant in Error.*
} Error to the Supreme Court of the State of Illinois.

REPLY TO SECOND BRIEF OF PLAINTIFFS IN ERROR.

ROBERT A. CHILDS,
CHARLES HUDSON,
COUNSEL FOR DEFENDANT IN ERROR.

BARNARD & GILLAN PRINT., CHICAGO.



2298

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vs.
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Defendant in Error.

Error to the Supreme Court of the State of Illinois.

Reply to Second Brief of Plaintiffs in Error.

At the argument of this cause the plaintiffs in error were given leave to file a second brief on the question of jurisdiction of this court, particular reference being made to the manner of raising the "federal questions" in the State Courts.

It appears (and counsel expressly admits it, reply brief, p. 27), that counsel has "extended" his brief "far beyond the boundaries originally intended."

I.

"IT IS ESSENTIAL TO THE JURISDICTION OF THIS COURT THAT IT SHALL APPEAR THAT ONE OF THE QUESTIONS MENTIONED IN THE ACT (SECTION 709 OF THE REVISED STATUTES OF THE UNITED STATES), MUST HAVE BEEN RAISED AND PRESENTED TO THE STATE COURT."

The foregoing is quoted from a most carefully considered opinion rendered by this court in 1875, in the case

of *Murdock* v. *Mayor, etc., of Memphis,* 87 U. S., 590. Its authority has never been questioned.

Among all the objections filed in the County Court of Cook County, and the assignments of error in the Illinois Supreme Court, there is but one place where any such federal question was *expressly* raised by the present plaintiffs in error, and that was in Objection 12, as follows:

12. "The statute under which the present proceedings are being conducted is contrary to the Constitution of the United States, and in conflict with Section 10 (first) of Article 1 thereof." (Pr. Rec., 19.)

Counsel now (and also at the oral argument), admit that "the reference to Section 10 of Article 1, contained in the foregoing objection, was inserted inadvertently." What he really depends on is the "due process of law" clause in the Fourteenth Amendment.

Chapin v. *Fye,* 179 U. S., 127, contains probably the latest expression of this court on the point in dispute. In that case the plaintiff in error moved for a new trial "on the ground (among others), that the statute in question was in violation of the 5th and 7th amendments of the Constitution, and repeated that contention in the assignments of error in the (Michigan) Supreme Court." That was held not sufficient to give the United States Supreme Court jurisdiction under the 14th amendment, the court saying:

> "If a party to an action in a State Court intends to invoke for the protection of his rights the Constitution of the United States, or some treaty, statute, commission or authority of the United States, he must so declare. * * * The 5th and 7th amendment were intended to operate solely on the Federal Government."

So although the plaintiff in error expressly invoked the United States Constitution, and although the part of that constitution invoked contained the same phrase, "due process of law," as the 14th amendment, yet because that particular paragraph limited the rights of the Federal Courts, and not the State Courts, it was held that the plaintiff in error had not properly presented the question he really intended to argue.

In the case at bar the plaintiffs in error were even wider of the mark—they mentioned the *"ex post facto"* clause of the *constitution,* and now base their argument on the "due process of law" clause of the amendment.

Counsel seek to avoid the objection that he has not *expressly* raised the question which he now seeks to argue, by alleging that it is sufficient that the question be *decided* (not raised), by necessary implication. The fallacy of the argument will be seen if it is analyzed and presented in the form of a syllogism, thus:

(1) "The Supreme Court of Illinois, by its decision, confirmed the assessment."

(2) "Such confirmation would be wrong if it deprived these objectors of their property without due process of law."

(3) "Therefore the decision of the Illinois Supreme Court, in effect, decided that the assessment did NOT deprive them of property without due process of law."

(4) "The Illinois Court having *passed* upon that Federal Question, it follows that this court has jurisdiction to review that decision."

The fallacy of the above argument is apparent without further comment. It results from confusing a case where

the validity of a statute *was* drawn in question, and a case where such validity *might* have been drawn in question, *but was not.* If, in this case, where there was no *express* objection on the ground that there was not due process of law, that matter is nevertheless "drawn in question," it follows that the same matter is always "drawn in question" by the same kind of "necessary implication" whenever a judgment is rendered against any person requiring the payment of money; and it would not matter whether he appeared and defended or allowed the suit to go by default. Under such a construction of Section 709 of the Judiciary act, the United States Supreme Court would soon be flooded with appeals in cases where the State Courts in *fact* never imagined they were deciding any federal question whatever.

The only other way counsel seeks to justify this absence of an express objection covering this constitutional point, is the following:

"The 9th objection found on page 11 of the printed record, states that the act under which the petition is filed, approved June 24th, 1895, is not in accordance with the Constitution of the State of Illinois, and is, therefore, void."

"The Constitution of the State of Illinois contains a provision similar to the provision which is a part of the Fourteenth Amendment to the Constitution of the United States."

"Conclusion: Therefore the said Act of 1895, is also contrary to the said provision of the Fourteenth Amendment, and the question was properly raised below."

The quotations are from reply brief; the conclusion is not expressed in exactly the above form, but the sub-

stance is the same. What counsel really says is: "It will be seen that the above provision of the Constitution of Illinois and the Fourteenth Amendment are substantially in the same language, and we feel justified in asking Your Honorable Court to apply the rule which seems to be laid down in the case of *Spencer* v. *Merchant, supra.*"

It would be a similar argument to say that:

"The A. B. & C. Railroad runs parallel with the D. E. & F. Road."

"I have bought a ticket over the A. B. & C. Railroad."

"Therefore I am entitled to ride over the D. E. & F. Road," which is absurd.

But the question is not a new one in this court.

In *Kipley* v. *Illinois,* 170 U. S., 182, A. D. 1897, the same argument was made, but did not avail. The court said:

> "We are of the opinion that this court is without jurisdiction to review the final judgment of the Supreme Court of Illinois in these cases. The answer makes no reference whatever to the Constitution or laws of the United States. It is true that it avers that the Illinois civil service act is "unconstitutional and void," but * * * our jurisdiction cannot arise in such case from inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case up intended to assert a *Federal* Right. The averment that the statute of Illinois was unconstitutional and void must be taken as intended to apply to the constitution of that state, and not to the Constitution of the United States."

Moreover, in each of the cases cited by counsel for the plaintiffs in error on this point, it appears that the Federal question was expressly raised.

Thus in *Murray* v. *Charleston*, 96 U. S., 432, it appears that "one of the grounds of the notice of the appeal was 'that such a tax is a violation of good faith in the contract of loan, impairs the obligation of said contract, and is, therefore, unconstitutional and void.' It is plain, therefore, that both in the Common Pleas and in the Supreme Court of the State, a federal question was presented by the pleadings and was decided."

In *Furman* v. *Nichols*, 8 Wall., 44, the court said:

> "The proceeding was an effort on the part of the plaintiff in error to test the question of the validity of the authority of a public officer of the state, exercising authority under the state, on the ground that such authority was repugnant to that provision of the Federal Constitution which forbids a state to pass any law impairing the obligation of contracts. It is alleged that Furman is the owner of the notes and entitled to have them received for taxes; that he had tendered them to the defendant, who had refused them, and that it was not in the power of the legislature to impair the validity of this contract."

In the case at bar there was no mention, in any objection, that there was any lack of "due process of law."

In *Spencer* v. *Marchant*, 125 U. S., 345, the court said:

> "He (the plaintiff in error), contended that the statute of 1881, was unconstitutional and void because it was an attempt by the legislature to validate a void assessment *without giving the owners of the lands an opportunity to be heard upon* the whole amount of the assessment. Thus he directly and in apt words presented the question whether he had been unconstitutionally deprived of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States."

In *Chicago Life Ins. Co.* v. *Needles,* 113 U. S., 574, the court says:

> "At the final hearing it (the plaintiff in error) moved the court upon written grounds for a final decree in its behalf, one of which was that the statutes of the state under which the proceedings were had were in violation of the Constitution of the United States in that they *impaired the obligation* of contract between the state and the company, and its policy holders and creditors."

The appeal was not dismissed, but the judgment was affirmed.

The only place where *Murray* v. *Charleston* is cited in support of the proposition that the federal question need not be *expressly* raised in the State Courts, is in the *dissenting* opinion of the late Justice FIELD, in *O'Neill* v. *Vermont,* 144 U. S., 323. In no case has the doctrine ever prevailed that the United States Supreme Court would reverse a State Court on a question which was not expressly *raised* before it. It is not necessary that the *opinion* of the State Court should expressly mention the Federal Question, but the record must show that the matter was actually "drawn in question."

In the case at bar the federal questions which plaintiffs in error now seek to raise were NOT drawn in question in the State Courts, and the State Courts did not have their attention drawn to the points, but they are now raised for the first time.

II.

There is an inconsistency between a point made in the original brief of plaintiffs in error, and a statement in their reply brief which may be of some interest to the court.

At page 18 of the original brief, counsel states: "The original proceeding having failed, the defendant in error herein instituted a new assessment for the purpose of obtaining the cost of the improvement previously constructed, by imposing a charge therefor AGAINST THE ABUTTING AND CONTIGUOUS PROPERTY. This we contend is in conflict with the Constitution of the United States." Citing *Norwood* v. *Baker,* 172 U. S., 269.

In their reply briefs (page, 18), however, they say: "The contention is that the *first* assessment was confined to contiguous property, while the *present* assessment is against all property benefited. For this reason we claim that the present proceedings are contrary to law."

Thus it will be seen that in their first brief they objected that the assessment *was* on frontage only, while in the reply brief they object that it is *not* on frontage only. The real fact of the matter is, that it makes no difference to them how the others are assessed so long as they were not assessed a *greater amount* than they were benefited, nor an *undue proportion* of the total cost; and both of those questions were *left to the jury,* and were determined adversely to the plaintiffs in error.

In fact counsel states in his reply brief: "We will admit that we would not be prejudiced by a new assessment roll covering a larger district, by which other property-owners are made to contribute to the expense."

III.

"THE CERTIFICATE OF THE CHIEF JUSTICE OF THE STATE COURT ALLOWING THE WRIT OF ERROR, THAT A FEDERAL QUESTION AROSE AND WAS DECIDED AGAINST THE PLAINTIFFS IN ERROR, CANNOT SUPPLY THE WANT OF ALL EVIDENCE TO THAT EFFECT IN THE RECORD."

Felix v. *Schwarenweber,* 125 U. S., 54.
Cal. Powder Wks. v. *Davis,* 151 U. S., 393.
Powell v. *Brunswick Co.,* 150 U. S., 433.

In the case at bar the plaintiffs in error quote at length from the petition for writ of error, and from the order entered thereon by the chief justice of the Illinois Supreme Court, to establish thereby that a federal question was raised and decided adversely to them.

The order merely allowed a writ of error. It did not certify that a federal question was involved.

In the case of *Powell* v. *Brunswick,* last above cited, this court said:

> "While the certificate of the presiding judge of the State Court * * * is always regarded with respect, it cannot confer jurisdiction on this court to re-examine the judgment below."

In *Felix* v. *Schwarenweber,* 125 U. S., 54, this court said:

> "When counsel applying for the allowance of a writ of error insist that a federal question has been decided against the plaintiff in error, the Chief Justice of the State Court may feel bound to allow the writ for the purpose of submitting to the final determination of this court whether such a question was necessarily involved in the judgment sought to be reviewed. But his certificate that such a question arose and was decided against the plaintiff in error

> cannot supply the want of all evidence to that effect in the record."

In the case at bar there is no such certificate.

In *California Powder Works* v. *Davis,* 151 U. S., 389, this court says:

> "We cannot find that the title or right referred to in argument was specially set up or claimed prior to its assertion in the petition for the writ of error, which forms no part of the record of the court below."

The writ of error was, therefore, dismissed.

It will, therefore, be seen that, without showing any disrespect to the order of the chief justice of Illinois, this court will refuse to look to that order or to the petition on which it was based to ascertain whether it now has jurisdiction by reason of a federal question being properly raised, in apt time, in the State Courts.

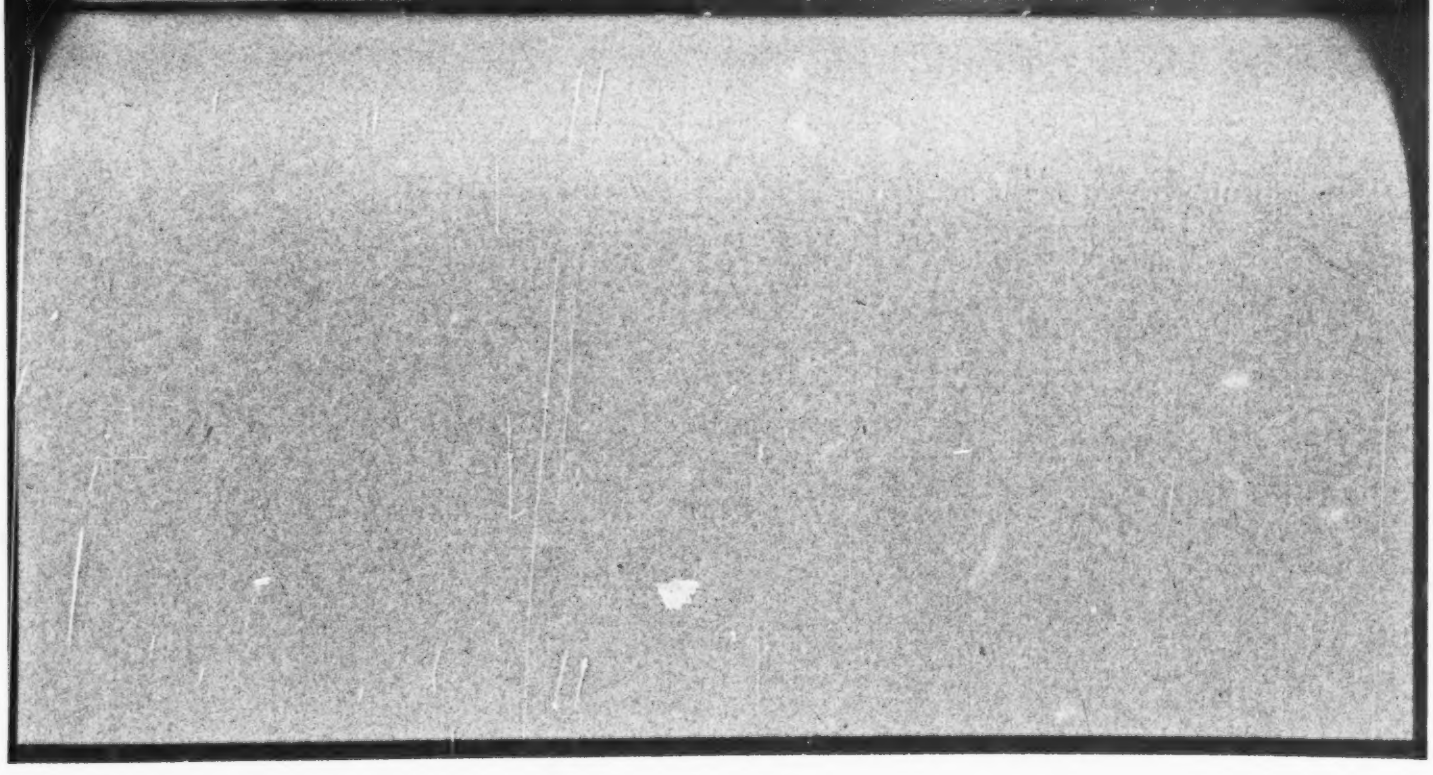
IV.

We believe that no "federal question" was properly raised below; that the invoking of the 14th amendment was an afterthought, and that the real reason for taking a writ of error to this court was that Messrs. Lombard, Cummings *et al.,* had taken their case to this court (No. 160, this term), and the present plaintiffs in error merely attempted to follow in their footsteps without having made suitable preparations for the journey.

We still believe that our motion to dismiss should prevail.

Respectfully submitted.

ROBERT A. CHILDS,
CHARLES HUDSON,
Counsel for Defendant in Error.



22993

Supreme Court of the United States.

No. 201.—October Term, 1900.

Thomas F. Farrell et al., Plaintiffs in Error,
vs.
The West Chicago Park Commissioners.
} In error to the Supreme Court of the State of Illinois.

[April 29, 1901.]

Mr. Justice Shiras delivered the opinion of the Court.

This case originated in proceedings to create and improve an avenue or thoroughfare known as Douglas boulevard, in the town of West Chicago.

The full history of those proceedings, contained in the statement of facts made by this court in the case of *Lombard and others* v. *The West Chicago Park Commissioners*, recently decided, renders it unnecessary to repeat them here. And the legal questions involved were so fully discussed in that case, and in *French* v. *Barber Asphalt Co.* and *Wight* v. *Davidson*, cognate cases decided at the present term of this court, that we are relieved from their further consideration.

The judgment of the Supreme Court of the State of Illinois is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.